

replacement Rules 600 to 617 and 800 to 816.

* * * * *

(168) * * *

(i) * * *

(A) * * *

(3) Previously approved on February 3, 1987 and now deleted without replacement Rules 601 to 618, 620 to 621, and 801 to 802.

(E) * * *

(3) Previously approved on February 3, 1987 and now deleted without replacement Rules 5.2 to 5.3, 5.6 to 5.9, 5.11 to 5.12, 5.13, 5.15 to 5.18, and 5.20 to 5.23.

* * * * *

(171) * * *

(i) * * *

(D) * * *

(5) Previously approved on April 12, 1989 and now deleted without replacement Rule 4.1.

* * * * *

(177) * * *

(i) * * *

(D) * * *

(2) Previously approved on April 16, 1991 and now deleted without replacement Rules 106, 501, 504 to 506, and 519.

* * * * *

Subpart M—Hawaii

4. Section 52.620 is amended by adding paragraphs (b)(1) and (c)(16)(i)(B) and revising paragraphs (c)(10) and (c)(14) to read as follows:

§ 52.620 Identification of plan.

* * * * *

(b) * * *

(1) Previously approved on May 31, 1972 and now deleted without replacement Chapter 43, Section 7.

(c) * * *

(10) Previously approved on April 23, 1979 and now deleted without replacement: A variance to the Hawaii Public Health Regulations, Chapter 43, Section 7 (b)(5) submitted on September 12, 1978, by the Governor.

* * * * *

(14) Previously approved on September 30, 1982 and now deleted without replacement: A variance of the Hawaii Public Health Regulations, Chapter 43, Section 8 (b)(1) submitted on April 6, 1982, by the Governor.

* * * * *

(16) * * *

(i) * * *

(B) Previously approved on August 18, 1983 and now deleted without replacement Section 11–60–36.

* * * * *

Subpart DD—Nevada

5. Section 52.1470 is amended by adding paragraphs (b)(1), (c)(14)(ii)(A), (c)(16)(viii)(A), and (c)(24)(iv)(A) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(b) * * *

(1) Previously approved on May 31, 1972 and now deleted without replacement Rules 2.8 and 2.11.

(c) * * *

(14) * * *

(i) * * *

(ii) * * *

(A) Previously approved on July 10, 1980 and now deleted without replacement Statutes 445.506, 445.511, 445.516, and 445.521.

* * * * *

(16) * * *

(viii) * * *

(A) Previously approved on August 27, 1981 and now deleted without replacement Section 9, Rules 9.2 to 9.3.

* * * * *

(24) * * *

(iv) * * *

(A) Previously approved on June 18, 1982 and now deleted without replacement Section 7, Rules 7.1 to 7.19 and Section 9, Rule 9.1.

* * * * *

Subpart DDD—American Samoa

6. Section 52.2820 is amended by adding the following paragraph (b)(1) to read as follows:

§ 52.2820 Identification of plan.

* * * * *

(b) * * *

(1) Previously approved on May 31, 1972 and now deleted without replacement Chapter 35.01, Section 35.0113 of the Environmental Quality Act.

[FR Doc. 97–16650 Filed 6–26–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[General Docket No 96–113; FCC 97–164]

Section 257 Proceeding To Identify and Eliminate Market Entry Barriers for Small Businesses

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: The attached Report summarizes the Commission's

implementation of Section 257 of the Telecommunications Act of 1996 (1996 Act), which requires the Commission to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services and information services or in the provision of parts or services to providers of telecommunications services or information services. The Report addresses issues raised by the more than 80 entities that filed comments, describes the Commission's policies to foster small business opportunities in the telecommunications industry, and explains agency-wide small business initiatives that the Commission has undertaken since enactment of the 1996 Act, as well as steps that the Commission intends to take in the future. The Report also describes the Commission's comprehensive study of the participation of small businesses and businesses owned by women or minorities in the telecommunications market. Through this Report the Commission reaffirms its commitment to achieving the policy goals of Section 257; to eliminate market entry barriers for small communications businesses.

ADDRESSES: The complete text of this report is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel: Linda L. Haller or Sheryl Wilkerson, at (202) 418–1720. Office of Communications Business Opportunities: Catherine K. Sandoval or Vivian Keller, at (202) 418–0990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report which was adopted on May 8, 1997 and released on May 8, 1997. The complete text of this report also can be obtained on-line at the FCC's Internet Home Page at www.fcc.gov, and may be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

I. Introduction and Statement of Policy

1. Section 257 of the Telecommunications Act of 1996 (Telecommunications Act or 1996 Act)¹ requires the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications

¹ Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996), Section 257.

services and information services, or in the provision of parts or services to providers of telecommunications services and information services.”² In carrying out this mandate, the Commission must “promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.”³

2. This Report summarizes the Commission’s implementation of Section 257, describes our strong commitment to continue to achieve its statutory goals, and outlines steps we plan to take in the future. Many of the measures described below occurred apart from this Report in other Commission proceedings or through agency access and outreach endeavors, in which the Commission integrated the mandate and policy goals of Section 257.

3. The Report also demonstrates our commitment to achieving the policy goals of Section 257(b). As described below, the Commission has taken a variety of measures to fulfill the four national policy objectives set forth in Section 257(b). First, with respect to “vigorous economic competition,” we have defined the term “market entry barrier” in a manner that facilitates entry by small businesses yet avoids unwarranted regulatory intervention that could distort a competitive marketplace.

4. Second, to promote “technological advancement,” the Commission has taken steps to eliminate outdated, unnecessary, or burdensome requirements and procedures. We have undertaken substantial efforts to disseminate information to small entities and entrepreneurs about Commission processes and communications opportunities, and to increase access to Commission decisionmakers. We also have made additional spectrum available which in turn should spur technological advancement. Third, we will continue to consider the policy favoring “diversity of media voices,” in our review of broadcast ownership rules and in other appropriate contexts, as well as in our further evaluation of issues relating to small businesses owned by women or minorities. Finally, we anticipate that our Section 257 actions thus far, combined with our ongoing commitment to enhance opportunities for small businesses, will promote the fourth policy goal of serving the “public

interest, convenience, and necessity” by expediting entry in the telecommunications market, encouraging development of new, innovative communications services, facilitating the availability of services in various geographic markets, and contributing to a vibrant, competitive telecommunications marketplace.

5. This Report also reflects our independent recognition of the crucial role that small businesses play in the U.S. economy. Small businesses contribute 47% of all sales in the United States, are responsible for 50% of the private gross domestic product, employ 53% of the private workforce, and produced an estimated 75% of the 2.5 million new jobs created during 1995. Small businesses also produce more than twice the number of innovations per employee as large firms. In addition, while only 3% of the employees in large enterprises work in research and development, 19% of the employees in comparable small enterprises with intellectual property work in research and development. Despite their important role, small businesses represent only a small portion of the businesses in telecommunications.

6. We initiated an omnibus Section 257 proceeding in May 1996 by adopting a Notice of Inquiry. Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, 11 FCC Rcd 6280 (1996), in FCC 96–216, 61 FR 33066, June 26, 1996 (Market Entry Barriers Notice of Inquiry). We asked how to define small businesses, requested profile data about the characteristics of small telecommunications businesses, inquired about market entry barriers for small businesses generally, and asked whether small businesses owned by minorities or women face unique market entry barriers. Over 80 entities filed comments.⁴ The commenters represent every sector of the telecommunications market and include individual entrepreneurs, small businesses, large communications companies, associations, federal and state government representatives, telecommunications policy groups, women’s organizations, and minority interests. Many of the parties’ recommendations concern other ongoing Commission rulemakings, and therefore, must be addressed and resolved under the timeframes and in the context of the records in those separate proceedings.

7. As described in this Report, some of our key measures implementing Section 257 to date are: deciding to use

service-specific definitions of small businesses, rather than adopting a general definition; planning new initiatives that will better enable small businesses to file comments and participate in Commission proceedings; requiring the Bureaus and Offices to ensure that our rulemaking processes enable meaningful comment on Commission proposals and their impact on small businesses; instituting rulemaking proceedings so as to ensure effective and prompt enforcement of the Communications Act and our rules; reducing information filing and other burdens that create obstacles to entry for small businesses; ensuring that the Commission fully considers the interests of small carriers in proceedings to determine funding mechanisms for universal service support; adopting licensing incentives to facilitate small business participation in spectrum auctions; adopting and proposing policies that permit geographic partitioning and spectrum disaggregation in various wireless communications services; adopting spectrum initiatives to encourage technological innovation by equipment manufacturers and others; speeding resolution of complaints; sponsoring conferences on telecommunications services and financing options; increasing public access to the Commission through technology by creating sites on the World Wide Web and establishing the National Call Center; and making continued efforts to ensure that the Telecommunications Development Fund (TDF or Fund) becomes an effective vehicle for removing financial obstacles to entry.

8. As this Report demonstrates, we shall give careful consideration to the commenters’ recommendations as we proceed to vigorously pursue the statutory objective of eliminating obstacles to entry and thereby to ensure a vibrant and strong telecommunications marketplace.

9. This Report focuses primarily on initiatives that relate to small businesses generally. Prior to taking any action specifically oriented to small businesses owned by women or minorities, we must fully evaluate the Section 257 record according to the constitutional requirements that govern action by the federal government based on race (strict scrutiny) or gender (intermediate scrutiny). As part of this evaluation, we are conducting a comprehensive study of the participation of small businesses and businesses owned by women and minorities in the telecommunications market.

² 47 U.S.C. 257(a).

³ 47 U.S.C. 257(b).

⁴ See Appendix A.

II. General Market Entry Barriers

A. Definitions and Characteristics

1. Definition of "Market Entry Barrier"

10. In the Market Barriers Notice of Inquiry, we observed that "market entry barriers" could include:

obstacles that deter individuals from forming small businesses, barriers that impede entry into the telecommunications market by existing small businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry * * *⁵

In their comments, parties discussed various kinds of obstacles and impediments that are currently faced by small telecommunications businesses. In this Report, we discuss these obstacles and impediments without deciding whether they qualify as "market entry barriers." It is important to note that not all impediments to small business participation in the telecommunications industry qualify as "market entry barriers" relevant to Section 257(a). We also describe several other Commission initiatives to encourage small business participation in the telecommunications industry. In this regard, we believe that this Report goes beyond what Section 257(a) requires.

11. America's Carriers Telecommunications Association requests that the Commission construe "market entry barrier" in a commercially effective manner so as to "create a competitive environment which permits small business" ability to expand their market presence once entry has been achieved." The Small Business Administration notes that Section 257 "does not define or limit" the term "market entry barrier" and recommends that the Commission construe the term "as aggressively as possible." Telecommunications Resellers Association claims that the market "is an effective regulator only if market forces are adequate to discipline the behavior of all market participants; if one or more such participants retains vestiges of market power, regulatory intervention is essential to protect the public interest." It argues further that "[r]egulatory intervention, therefore, continues to be necessary to ensure opportunities for small resale carriers in markets that are still dominated by much larger providers * * * [and that]

[s]uch action could be deregulatory, but it also could require regulatory measures."

12. AT&T opposes our original construction of "market entry barrier," stating that the 1996 Act did not intend the Section 257 proceeding "to carve out certain market niches as the preserve of small companies, or to subsidize their competition against larger entities." AT&T points out that barriers to small firm entry may simply result from the fundamental structure of a given market—for example, a market where there may be efficiencies due to economies of scale, or where a large up-front investment is required to begin operations.

13. From a public policy perspective, and consistent with the "pro-competitive, de regulatory national policy framework" established by Congress in the 1996 Act, we do not regard all impediments or obstacles to small business entry to necessarily be "market entry barriers" that require governmental intervention under Section 257. Instead, we believe that the term "market entry barrier" as used in Section 257(a) is primarily intended to encompass those impediments to entry within the Commission's jurisdiction that justify regulatory intervention because they so significantly distort the operation of the market and harm consumer welfare. Removing these impediments will, in our opinion, facilitate the entry or expansion of small businesses into telecommunications markets as required by Section 257(a) and also fulfill the national policy goals articulated in Section 257(b).

14. It is not our objective to make viable small business entry into every sector of the telecommunications and information services industries because there may be legitimate efficiency reasons that favor large-scale operation. Finally, our construction of the term "market entry barrier" does not in any way limit our broad obligation under Section 253 of the Act to preempt state or local legal requirements that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." ⁶

2. Definition of "Small Business"

15. In the Market Entry Barriers Notice of Inquiry, we requested comment on how small businesses should be defined under Section 257. Specifically, we asked whether we should define the term by the number of employees, gross revenues, net revenues, assets or any other factors. In

addition, we asked whether we should adopt a general size standard or a specific standard for particular services. We also sought comment on whether we should use other factors such as minimum capital requirements, debt/equity ratios, cash flow, net worth or other indicia of a business' ability to enter and compete in the marketplace.

16. The Commission historically has used a number of different size standards to define small businesses, depending on the particular communications service. The Commission has used size standards as a basis for analyzing the impact of its rules on small business entities pursuant to the Regulatory Flexibility Act.

17. Those parties commenting on the issue of whether we should adopt a general size standard or specific standards for particular services seem to prefer the latter approach. The Small Business Administration argues that the size standards already in place for all types of small telecommunications carriers have served small businesses well and the Commission has not explained why they should be jettisoned for purposes of this proceeding. The Small Business Administration also notes that it would be virtually impossible to develop a single definition of small businesses given the diversity inherent in the telecommunications industry. It argues that a single definition would be contrary to the intent of the Small Business Act, which specifies that the Administrator is to make a detailed definition and that definitions shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries. Similarly, America's Carriers Telecommunications Association suggests that the Commission fashion policy on the basis of identifiable spheres of service being offered.

18. We agree with those commenters who suggest that the Commission should not adopt a small business definition based on a general size standard. The comments demonstrate that each service has its own characteristics.

19. In light of this, we believe that the better approach would be to adopt specific size standards for individual services in proceedings implementing Section 257 incentives. We note that our decision here is consistent with our current approach to adopting small business definitions in the competitive bidding context.

20. Finally, several parties commented on the small business definitions adopted by the Commission

⁵ Market Barriers Notice of Inquiry, FCC Rcd 6280, 6283 (1996), in FCC 96-216, 61 FR 33066, June 26, 1996. We also stated that discrimination could be a market entry barrier as well. Id. at 6305-6306. See also *infra* ¶¶ 210-225 (addresses unique obstacles facing small telecommunications businesses owned by women or minorities).

⁶ 47 U.S.C. § 253(a).

for specific services in other contexts and proposed alternative definitions for purposes of Section 257. As we are not now adopting a generic small business definition for purposes of Section 257, we find it unnecessary to address those comments in this report.

3. Characteristics of Small Telecommunications Businesses

21. In the Market Entry Barriers Notice of Inquiry, we requested profile data about small telecommunications businesses, including their financing sources, types of services provided, markets served, geographic areas of operation, and information concerning their employee workforces.⁷ We received much general information about the nature of small telecommunications businesses, as well as specific profile information on a number of services, including Specialized Mobile Radio (SMR) services, cable television services, and wireless resale services.

22. A number of commenters point out that, in contrast to small businesses in some other industries, small businesses in the telecommunications industry typically are start-up companies that require a significant amount of equity capital or a combination of debt and equity. In addition, Small Business in Telecommunications notes that due to insufficient capitalization, small telecommunications businesses tend to engage in localized operations, serving only a portion of a larger market. Small Business in Telecommunications also notes that unlike large companies, small businesses do not have the capital resources to spread costs over an extended period. Thus, they need to earn a profit in a shorter period of time.

B. Financial Impediments

1. The Record

23. Many parties have identified access to capital as a primary market entry obstacle for small businesses. Commenters assert that traditional sources of capital for small businesses are insufficient for today's entry costs. The record also is replete with comments that small businesses must assume great risks and make personal capital contributions to finance their companies.

24. Some parties suggest ways for the Commission to address financial impediments. One party suggests that the FCC should encourage lenders to provide non-personally guaranteed

funds to small carriers under the same terms and conditions provided to larger carriers. Another commenter contends that the FCC must recognize that gaining access to a spectrum license itself is not enough—the availability and cost of financing is critical to the success of PCS entrepreneurs.

25. Many parties address the Telecommunications Development Fund as a source of financing and provide recommendations on how it should be administered.

2. Commission Measures

26. The record shows that financial obstacles create substantial impediments to small business entry in the telecommunications market. We recognize that the telecommunications industry is generally capital intensive and that substantial financial resources are necessary for successful participation in most telecommunications sectors. The Commission is limited, however, in its authority—and concomitant ability—to remove financial impediments and obstacles. The FCC has no statutory jurisdiction over the financial industry. Thus, we cannot directly require banks, lenders, investors, or any other entity to finance small businesses, or any sized business, in the telecommunications industry.

27. The Commission, however, has taken measures to enhance access to capital for small businesses in the auctions process. Pursuant to Section 309(j) of the Communications Act, the Commission has taken steps to promote capital access for small businesses, businesses owned by minorities or women, and rural telecommunications businesses in the provision of certain spectrum-based services. These mechanisms facilitate access to capital by making the license costs more affordable for small businesses.

28. Additionally, Congress created the Telecommunications Development Fund and provided the Commission with a statutory role in its operation. As provided in Section 707 of the Telecommunications Act, the Fund's mission is to promote access to capital for small businesses in the telecommunications industry, stimulate development of new technology, promote employment and training, and support universal service and the delivery of telecommunications services to underserved areas. TDF is funded primarily by the interest earned on certain deposits for spectrum auctions, and is authorized to make loans and extend credit to small businesses.

29. On November 20, 1996, the FCC Chairman appointed the full TDF board

of directors.⁸ Pursuant to the statute, the board is in the process of establishing general policies that will govern the overall structure and operation of the Fund. TDF, a non-profit corporation, is authorized to make loans, investments, or other extensions of credit to small businesses; to provide financial advice to small businesses; and to prepare research studies, financial analyses, or other services consistent with the purposes of the Fund. The Board is currently in the process of creating a sustainable source of capital for small communications businesses and is investigating means to leverage the more than \$20.3 million in initial capitalization it has received to date from auction upfront payments in order to create a larger pool for small communications business loans and equity investments.

30. The full TDF board is finalizing its review of market opportunities where TDF could direct its resources. TDF is commencing a search for a fund manager. The board also is working to develop TDF's structure to provide loans, equity investments and technical assistance.

C. General Regulatory Obstacles

31. Many of the market entry impediments identified by the commenting parties concerned general regulatory issues, and in particular, difficulties in obtaining access to the Commission itself, participating in Commission proceedings, and in obtaining information about new services. The Commission already has taken several steps to eliminate many of these obstacles.

1. Access to Commission Decisionmakers

32. Several parties point out that, unlike large companies and associations, small businesses often do not have the time or resources to meet with Commission staff or participate in Commission proceedings. Others note that many small businesses historically have had little representation before the

⁸FCC Public Notice, Public Sector Board Members Appointed to the Telecommunications Development Board (released Nov. 20, 1996). The TDF Board members are: Interim Chairperson, Solomon D. Trujillo, President and Chief Executive Officer, U.S. West Communications Group; Richard L. Fields, Managing Director of Allen & Company Incorporated; Thomas A. Hart, Jr., Partner, Ginsburg, Feldman & Bress; Debra L. Lee, President and Chief Operating Officer of BET Holdings, Inc. (Black Entertainment Television); Ginger Ehn Lew, Deputy Administrator, Small Business Administration; Kirsten S. Moy, Director, Community Development Financial Institutions (CDFI) Fund, Department of Treasury; and William E. Kennard, General Counsel, Federal Communications Commission.

⁷Market Entry Barriers Notice of Inquiry, FCC Rcd 6280, 6298 (1996), in FCC 96-216, 61 FR 33066, June 26, 1996.

Commission and as a consequence, small businesses are frequently viewed as outsiders in the telecommunications industry.

33. At the outset, we note that particular measures, both legislative and regulatory, have been created to ensure that the interests of small businesses are appropriately taken into account by federal agencies. At the legislative level are the Regulatory Flexibility Act (RFA),⁹ and, most recently, the Small Business Regulatory Enforcement Fairness Act (SBREFA), which Congress enacted as part of the Contract with America Advancement Act of 1996 (CWAAA), that strengthens and broadens the existing mandate under the RFA.

34. For example, the 1996 amendments to the RFA now provide for judicial review and include expanded authority for the Chief Counsel for Advocacy of the Small Business Administration to file *amicus curiae* briefs in court proceedings on the question of whether an agency properly complied with the RFA.

35. Other provisions of the new law expand on these efforts, e.g., Section 212 requires federal agencies to publish easily understood "small entity compliance guides" to assist businesses in complying with all regulations for which a final regulatory flexibility analysis is required. Section 213 requires federal agencies to establish within one year of enactment a program to answer inquiries of small entities seeking information on and advice about regulatory compliance, and Section 222 creates a Small Business and Agriculture Regulatory Enforcement Ombudsman within the Small Business Administration to give small businesses a confidential means to comment on agency enforcement activities.

36. In response to these requirements, the Commission is developing compliance guides to assist small entities. Small entities can call the FCC for informal guidance on compliance questions. Small entities and other businesses may also call the FCC's National Call Center toll free at 1-888-Call-FCC to receive fact sheets and answers to routine questions. The Call Center will direct callers to the appropriate Bureau or Office staff for more detailed questions.

37. The Commission's Office of Communications Business Opportunities specifically addresses small business concerns. The Commission is mindful of the financial and other difficulties that many small businesses face and of the limited

resources that are available to them. As such, OCBO's primary mission is to promote opportunities for small business participation in the communications industry in order to increase competition, encourage innovation, increase employment opportunities, improve services to all communities, and increase the diversity of voices and viewpoints over the public airwaves. OCBO serves as the principal small business policy advisor to the Commissioners and is the Commission's primary resource for implementing SBREFA.

38. OCBO also engages in extensive outreach and research. It provides information to the public, industry, trade organizations, and public interest organizations on the participation of small businesses, minorities, and women in various communications services. OCBO also organizes and participates in numerous conferences throughout the country designed to increase small business participation in the telecommunications industry and the regulatory process.

39. We also wish to emphasize that any interested party may file or participate in Commission proceedings and file comments before the Commission. To assist them, the Commission has published several Fact Sheets describing how to participate in Commission proceedings. As a matter of general policy, we believe it is imperative to solicit the advice and perspectives of all interested parties, including small businesses. We have sought to do so by reaching out to groups who do not ordinarily visit the Commission or participate in its proceedings.

40. In addition, last year, the Commission adopted a Notice of Inquiry seeking suggestions from all interested parties on how best to streamline its processes and improve its delivery of services.¹⁰ The responses ranged from proposals for major policy initiatives to suggestions for minor adjustments in the way we do business. The Commission has released a report summarizing its efforts to date to improve internal processes and to improve Commission operations.¹¹

41. Another vehicle the Commission has used to assist small businesses in the Commission's processes is the use of seminars. One of the first seminars the Commission held following passage of

the 1996 Act was designed to help individuals participate in the Commission process.¹² This forum provided the general public with instruction on how to get information from the FCC, how to track specific issues, how to file comments, and how to understand FCC terminology. The Commission also held two seminars about its World Wide Web site¹³ and has participated in numerous other communications conferences for small businesses and minorities.

42. The Commission will consider the recommendations developed in this proceeding as it plans future public seminars. We will encourage bureaus and offices, to sponsor, on a regular basis, seminars on issues of importance to small businesses, including emerging technologies, spectrum opportunities, and financing of communications services. We also will encourage regional and local conferences, which are particularly valuable in reaching small businesses that are not able to attend conferences in Washington, D.C.

43. The Commission also has initiated an electronic comment filing effort which will make it easier for small businesses and organizations to file comments and review comments filed by others. On April 3, 1997, we adopted an Electronic Filing Notice of Proposed Rulemaking, FCC 96-113, 62 FR 19247, April 21, 1997, which proposes the necessary rule changes for implementing the electronic filing system and invites comment on implementation questions. In proceedings where comments have been filed on diskettes, the public is able to view those comments online as long as they can access the World Wide Web site. A contract has been awarded to develop a new database system to receive, process, and make available comments in electronic form.

44. Further, all Commission Offices and Bureaus are now accessible through the Commission's Internet site.¹⁴ Each office has an e-mail address and personalized Web page with information about the office and where to direct inquiries. In addition, texts of Commission actions, including notices of proposed rulemaking, orders, public notices, press releases, and speeches are now available on the Internet. The Commission also has created a general FCC mailbox entitled "fccinfo" for

¹² See FCC News Release, Learn Your NOIs: FCC Open Forum on How to Participate in the FCC Process (released May 2, 1996).

¹³ These fora, titled How to Find FCC Information on the Internet, were held on June 24, 1996 and October 22, 1996.

¹⁴ The URL address for the FCC home page is <http://www.fcc.gov>.

⁹ Pub.L. No. 96-354, 94 Stat. 1164 (1980).

¹⁰ In the Matter of Improving Commission Processes, Notice of Inquiry, 11 FCC Rcd 14006 (1996) (Commission Processes Notice of Inquiry).

¹¹ Report to the Commission, Office of Plans and Policy, In the Matter of Improving Commission Processes: FCC Notice of Inquiry PP 96-17, July 25, 1996.

electronic mail to the FCC.¹⁵ In addition, as described above, the public may utilize the FCC's National Call Center.

45. We believe that all of the initiatives described above will significantly enhance the ability of small businesses to make their perceived barriers known to the Commission and its decisionmakers. We also shall continue to be sensitive to the special needs of small businesses in this regard and to look for new ways to enhance their ability to have a voice in our decisionmaking process.

2. Commission Procedure as an Obstacle

46. According to the Cable Telecommunications Association, in many instances, the agency's rulemaking process does not set forth any proposed rule or variations thereof that enables commenters to analyze the potential impact on small businesses before final rules are adopted. It strongly recommends that the Commission reinstitute the practice of putting out for public comment in notices of proposed rulemaking the actual proposed language or variations thereof of the rules the Commission is actually considering adopting.

47. The Administrative Procedures Act (APA) requires an administrative agency to give "either the terms or substance of the proposed rule or a description of the subjects and issues involved."¹⁶ Thus, it does not require an agency to set forth the actual text or variations of proposed rules. Nevertheless, we shall make every effort to ensure our rulemaking process complies with the spirit and letter of the APA and SBREFA by facilitating meaningful comment on the effects of our rulemaking proposals and carefully analyzing, and setting forth in that analysis, the effects of our final actions on small businesses. To the extent not precluded by statutory time constraints or the complex nature of the particular subject matters involved, we can further these goals by including in our rulemaking notices the text of actual proposed rules or variations thereof. However, many times the Commission expresses a range of options in its proposals, to solicit comment on those options, and on the underlying issue, before concluding that one option is the best. We believe this practice is consistent with the APA and SBREFA and often allows small businesses and

all commenters a fuller opportunity to be part of the FCC's decisionmaking process because their comments affect the Commission's choice of rules. We thus shall strongly encourage bureaus and offices when they craft rulemaking proposals for our consideration to set forth actual text of proposed rules where feasible and practicable, although comment on a range of options and issues also may be solicited.¹⁷

3. Access to Information

48. Several parties also claim difficulties in obtaining access to information about new communications services and related regulatory matters as market entry barriers. To remedy this, the parties recommend that the Commission make documents and information accessible electronically to all parties and at costs that are reasonable to the general public and small businesses.

49. We have taken many significant steps to ensure that information about new services and regulatory proceedings is made available. In addition, OCBO and the Commission's Office of Public Affairs (OPA) have made a special effort to reach out to small businesses and others who have less experience in working with the Commission and who are uncertain about how to obtain information from the Commission.

50. OPA's Public Service Division provides a variety of information, such as Fact Sheets,¹⁸ Information Bulletins and Brochures, and handles incoming phone calls and requests from walk-in visitors on all topics.¹⁹ OPA maintains mailing lists and performs outreach

¹⁷ It should be fully understood, however, that this may not be possible where statutory time constraints exist, where numerous broad issues exist that make publication of a particular rule or set of rules impractical or inappropriate, or where other extenuating circumstances warrant expeditious action that would preclude setting forth with particularity a specific rule or versions thereof in the notice. To the extent that parties and other interested persons believe that final rules adopted do not adequately address their concerns, they can seek redress through the reconsideration process, i.e., requesting the Commission to modify or otherwise reconsider its rules.

¹⁸ The Office of Public Affairs, Public Service Division has published Fact Sheets to help the public obtain information and participate in the Commission rule making process. They include, but are not limited to: FCC Fact Sheet, How to Participate in the FCC Process (released May 1996); FCC Fact Sheet, How to Participate in the FCC Rule Making Process (released May 1996); FCC Fact Sheet, Hints on Filing Comments With the FCC (released May 1996).

¹⁹ The Office of Public Affairs is located at 1919 M Street, N.W., Room 254, Washington, D.C., (202) 418-0200. Interested parties who are unable to visit the FCC in person may obtain documents and services from the FCC's duplicating contractor, International Transcription Service Inc. (ITS) at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

activities to organizations, businesses and individuals who are interested in particular issues. OPA also has expanded its outreach to "nontraditional" media, including community and Spanish language newspapers nationwide. Interested parties can obtain the Commission's Daily Digest over the Internet by subscribing to the Commission's list-server²⁰ or through the Commission's fax-on-demand²¹ phone line service.

51. After passage of the Telecommunications Act, OPA established a special Telecommunications Act home page on the Commission's web site to provide a central location for all public information regarding Commission actions to implement the law. OPA also modified the Commission's Daily Digest to assist the public in tracking the Commission's proceedings.

52. OPA also publishes an Information Seekers Guide which contains detailed information about the Commission's reference rooms, and the various ways the public can obtain information at the Commission. In addition, OPA is consolidating public reference files into the main FCC Reference Center, which will enable the public to obtain all ownership, pending and granted licenses, and EEO files from one central location. All Commissions documents on the Commission's Internet site are available for free.

III. Impediments in Specific Services

A. Common Carrier Services

53. In the Market Entry Barriers Notice of Inquiry, the Commission sought comment on ways to eliminate market entry barriers and enhance opportunities for entrepreneurs and small businesses in wireline services. Many of the obstacles identified by small businesses in the common carrier services relate directly to control of vital inputs by incumbent carriers and accordingly fall within the definition of policy-relevant entry barriers. Examples of such barriers include: incumbent LEC refusal to comply with interconnection obligations; onerous conditions, such as high deposits for resale; incumbent LEC monopoly control over subscriber list

²⁰ Request for subscriptions to the Commission's list-server should be sent via e-mail to subscribe@info.fcc.gov. See FCC Public Notice, Daily Digest on Listserv (released Oct. 30, 1995).

²¹ The "fax-on-demand" service uses simple call and prompt instructions to send materials directly to a fax machine. Lengthy documents can be downloaded directly from the Commissions World Wide Web site at <http://www.fcc.gov>. The listserver provides only the Daily Digest and has recently expanded to include speeches.

¹⁵ The general mailbox for e-mail to the FCC is located at fccinfo@fcc.gov. Freedom of Information Act (FOIA) requests can be sent to fccfoia@fcc.gov. See also FCC News Release, FCC Upgrades on the Internet (released June 6, 1995).

¹⁶ 5 U.S.C. § 553(b)(3).

information; and incumbent LEC control and assignment of NXXs.²²

54. Commenting parties also assert that regulatory obstacles have evolved in a manner that favors incumbent carriers and thus create a tremendous disincentive for small businesses to enter the telecommunications marketplace. Examples of these perceived regulatory barriers include: the formal complaint process; regulatory filing burdens; support mechanisms for universal service; and the section 214 certification process.

1. Interconnection and Resale Barriers

55. Commenting parties raise a number of issues regarding interconnection and emphasize that aggressive enforcement of the interconnection and resale rights set forth in section 251 of the Communications Act, as amended, is essential for small businesses and new entrants to compete effectively in the telecommunications marketplace. Several commenters indicate that national implementation of the 1996 Act is essential because disparate regulations throughout the states would operate as a significant obstacle for small businesses, while some commenters claim that absent strong national standards, incumbent LECs will retain the ability to erect insurmountable barriers for new entrants, in particular small businesses.

56. The Commission concurs that carrier compliance with, and our diligent enforcement of, the rights and obligations set forth in section 251 are absolutely necessary for achievement of the pro-competitive goals and policies of the 1996 Act. In August 1996, as required by the 1996 Act, the Commission adopted rules to implement sections 251 and 252 of the Act, which establish the basic obligations of carriers, especially in the local exchange and exchange access markets.²³ Section 251 establishes the general interconnection obligations for all telecommunications carriers, delineates further obligations for LECs, and prescribes additional requirements for incumbent LECs. Section 252 generally sets forth the procedures that

state commissions, incumbent LECs, and new entrants must follow to implement the requirements of section 251 and establish specific interconnection arrangements. The Commission's regulations implementing the local interconnection and resale provisions of the 1996 Act, however, have been partially stayed by the United States Court of Appeals for the Eighth Circuit.²⁴ Accordingly, although the Commission remains fully committed to enforcement of our rules implementing the various interconnection and resale rights and obligations set forth in section 251, we may do so only to the extent those rules are not currently stayed by the appellate court. We will, however, continue to advocate national pricing rules in court.

2. Enforcement and the Complaint Process

57. In the Market Entry Barriers Notice of Inquiry, the Commission specifically requested comment on whether small businesses have particular difficulties regarding Commission rules or policies. Several commenting parties identified the Commission's own formal complaint process as a barrier. Excessive delay, according to the commenting parties, renders the complaint process ineffective as a tool to enforce the Communications Act and the Commission's rules, in particular the provisions of the 1996 Act designed to promote entry into the local telecommunications marketplace. To remedy the perceived barriers of the Commission's existing formal complaint process, commenting parties advocate that the Commission adopt a streamlined, highly expedited complaint process for resolving carrier-to-carrier disputes.

58. We agree that effective enforcement of the Communications Act and existing Commission rules and policies is imperative if small businesses are to participate fully in the telecommunications marketplace. In recognition of this need, the Commission released a notice of proposed rulemaking that proposes procedures designed to expedite the resolution of formal complaints against common carriers.²⁵ As some parties recommend in this proceeding, the

Formal Complaint NPRM sets forth proposed procedures, including legal and evidentiary standards, for requests for cease-and-desist orders and other forms of interim relief designed to expedite disposition of formal complaints and associated requests for relief. We also have proposed to waive potentially burdensome formal and content requirements upon a showing of financial hardship or other public interest showing. The Commission anticipates that what has become an obstacle for small businesses will likely be eliminated as a consequence of revising and expediting the complaint process for all common carriers.

59. Further, in response to suggestions regarding staffing necessary to ensure effective enforcement of and compliance with the Communications Act and the Commission's rules and policies, new staff has been added to both the formal and informal complaints branches of the Enforcement Division within the Common Carrier Bureau. A review of staffing in the Audits Branch of the Accounting and Audits Division in the Common Carrier Bureau is likewise being undertaken.

60. Finally, a "paperless environment" is being implemented to increase the efficiency of the informal complaint process. All such correspondence submitted to the Common Carrier Bureau in paper form will be optically scanned and posted to an imaging database for processing. This will increase efficiency by, among other things: providing a means for the Bureau to identify on-line the status of pending informal complaints and inquiries; facilitating rapid storage and management of documents associated with a particular complaint or inquiry; and providing Commission staff with a virtually real-time means of obtaining statistical information about complaints and inquiries.

3. Information Filing Burdens

61. Several parties have recognized that with movement to a competitive telecommunications marketplace, day-to-day regulatory filings are unnecessary and may serve anti-competitive purposes. Another commenting party proposes relaxed tariff filing requirements for all but the largest carriers.

62. As demonstrated by recent orders, the Commission is committed to eliminating or streamlining tariff filing and other reporting requirements applicable to entities providing common carrier services.²⁶ The Commission

²² An "NXX" code, or central office code, is the second three digits of a ten digit telephone number and identifies the carrier switch that serves the particular customer location. See Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd 2588, 2593-2594 (1995) (Numbering Plan Order).

²³ See generally First Local Competition Order, 11 FCC Rcd 15499; Implementation of the Local Competition Provisions the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (Second Local Competition Order).

²⁴ In particular, See *Iowa Util. Board v. FCC*, No. 96-3221 and consolidated cases (8th Cir. Oct 15, 1996).

²⁵ See Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 96-238, FCC 96-460 (released Nov. 27, 1996) (Formal Complaint NPRM).

²⁶ See Revision of Filing Requirements, Report and Order, 11 FCC Rcd 14110 (1996) (Revision of

believes that its actions taken with respect to reporting requirements will facilitate increased participation by entrepreneurs and small businesses in the provision of telecommunications services, while preserving their ability to obtain sufficient information to make rational market entry decisions.

4. Impact of Commission Proceedings on Small Telcos

63. Several commenting parties express concern that the Commission has failed to consider the potential adverse impact that its proceedings may have on small or rural incumbent LECs by automatically assuming the dominance of rural incumbent LECs and thus avoiding analysis under the Regulatory Flexibility Act.

64. The Commission continues to believe that incumbent LECs do not qualify as small businesses, as defined by the Small Business Administration, because they are dominant in their field of operation due to their current control of bottleneck facilities. Our assessment, however, may change in the future as local telecommunications markets become fully competitive. In the meantime, the Commission nevertheless has adopted the practice of including a discussion of the potential impact of Commission rules on small incumbent LECs. In addition, as suggested by at least one commenting party, the Commission has considered the impact on small carriers when revising the structural safeguards applicable to incumbent LECs as mandated by the 1996 Act.

5. Existing Universal Service Funding Mechanisms

65. According to America's Carriers Telecommunications Association, the looming reality that any small

interexchange carrier will have to shoulder a portion of the financial burden for universal service once it reaches a certain size operates to discourage such small carriers from expanding their existing interexchange operations or from providing interexchange service in the first place. America's Carriers Telecommunication Association proposes that the Commission amend part 69 of this Chapter to fund Universal Service and Lifeline Assistance through a broad-based charge rather than through charges assessed upon a small segment of interexchange carriers.

66. In implementing the Joint Board's recommendations regarding reform of the mechanisms for preserving and advancing universal service, the Commission has already recognized the concern expressed by America's Carriers Telecommunication Association by adopting competitively neutral mechanisms for calculating universal service support.²⁷ Specifically, in the recently adopted Universal Service Report and Order, the Commission has required that any telecommunications carrier providing any interstate telecommunications service for a fee to the public (or to such classes of eligible users as to be effectively available to the public), and certain other providers of telecommunications, must contribute to the funding of universal service as well as that the contributions likewise must be determined in a competitively neutral manner based on end-user telecommunications revenues.

67. In a related vein, some commenting parties suggest that the Commission streamline, or forbear from, its policy of requiring study area waiver petitions for companies seeking to acquire, and subsequently add, additional telephone exchanges to their existing study areas,²⁸ claiming that the waiver procedure serves as yet another hurdle for small telecommunications carriers venturing to expand service through the acquisition of exchanges.

68. In evaluating petitions seeking a waiver of the rule freezing study areas, the Commission applies a three-prong

test: (i) The change in the study area must not adversely affect the Universal Service Fund support program; (ii) the state commission having regulatory authority must not object to the change; and (iii) the public interest supports the change.²⁹ We just completed the first step in the process of effecting sweeping reform of the mechanisms for preserving and advancing universal service and will soon commence a proceeding to review our jurisdictional separations rules. Accordingly, we believe that it is premature to consider the streamlining proposal suggested by a commenter. Nevertheless, we shall carefully consider and evaluate the merits of any such proposals in future proceedings.

6. Impartial Administration of NXXs

69. One party, which is a franchise under which individually owned and operated small business communications consultants provide voice messaging services, describes difficulties encountered as the result of allegedly improper administration of central office codes (i.e., NXXs) by incumbent LECs. This party states that it has encountered multiple instances of LEC service problems including, for example, LEC failure to update translation tables to assignment of numbers reserved for the LEC's own internal use.

70. The Commission agrees that access to numbering resources is essential to all entities, not just small businesses, desiring to participate in the telecommunications industry. The concerns raised over numbering plan administration have been, or are in the process of being, addressed by the Commission. For example, the newly added section 251(e)(1) of the Communications Act requires the Commission to create or designate one or more impartial entities to administer numbering and to make such numbers available on an equitable basis. Even prior to the passage of the 1996 Act, the Commission announced the establishment of the North American Numbering Council (NANC) and directed that central office code administration be transferred from the LECs to a neutral entity selected to serve as the North American Numbering Plan Administrator (NANP Administrator). To ensure efficient and impartial number administration, the Commission has required that the new NANP Administrator not be aligned with any particular telecommunications industry segment.

Filing Requirements Order). See also Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11718 (1996) (amending the Commission's rules to specify that carriers may now file the Automated Reporting Management Information System (ARMIS) 43-0 quarterly report and the 43-06 semi-annual Service Quality report on an annual basis); FCC Public Notice, Common Carrier Bureau Seeks Suggestions on Forbearance, DA 96-798 (released May 17, 1996) (requesting suggestions on specific regulatory rules or requirements that meet the statutory standards for forbearance). The Commission also has eliminated tariff filing requirements for interstate, domestic, interexchange services offered by nondominant interexchange carriers. This detariffing order, however, has been stayed by the United States Court of Appeals for the D.C. Circuit. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order, CC Docket No. 96-61, FCC 96-424 (released Oct. 31, 1996), stay granted sub nom., MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

²⁷ See Federal-State Joint Board on Universal Service, Report and Order, FCC 97-157 (adopted May 7, 1997) (Universal Service Report and Order). See also Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 91 (1996), FCC 96-45, 61 FR 63778, December 2, 1996 (Joint Board Universal Service Recommended Decision).

²⁸ A study area is a geographical segment of a carrier's telephone operation, which in general corresponds to a carrier's entire service territory within a state. See 47 CFR Part 36, Appendix. For jurisdictional separations purposes, the Commission froze all service area boundaries effective November 15, 1984.

²⁹ See U.S. West Communications, Inc., Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (U.S. West Order).

71. NANC, through various working groups, is developing a plan for the transfer of central office code administration. It also anticipates that it will be recommending a NANP Administrator by May 15, 1997. In the interim period prior to the transfer, Bellcore and the incumbent LECs will continue their existing numbering administration functions. The Commission, however, has declared that any attempts to delay or deny central office code assignments, or to charge different "code opening" fees for different providers of telecommunications services, would violate sections 251(b)(3) and 202(a) of the Telecommunications Act, as well as the Commission's numbering guidelines.³⁰ The Commission remains committed to closely monitoring actions by incumbent LECs as central office code administrators until those functions are transferred to the new NANP Administrator.

72. In addition, the Commission has specifically declined to allow states to serve as central office code administrators. Moreover, to ensure that small businesses do not suffer competitive disadvantages, we have mandated that state commissions choosing to implement an all-services area code overlay must include: (i) mandatory 10-digit dialing by all customers between and within area codes in the area covered by the overlay; and (ii) the availability of at least one NXX in the existing area code to every telecommunications carrier authorized to provide telephone exchange service, exchange access, or paging service in the affected area code at least 90 days before introduction of the overlay.

73. The Commission believes that these actions adequately address any entry barriers that small businesses may have previously faced due to incumbent LEC control of central office code assignment. In addition, as further evidence of an ongoing commitment to eliminating obstacles faced by small telecommunications businesses, the Commission has recently launched a home page for the NANC to facilitate open participation in, and wide-spread dissemination of information regarding, numbering plan administration.³¹

7. Preemption of Onerous State Requirements

74. Several commenting parties cite perceived onerous state regulatory requirements as one of the major

obstacles to small business entry into, and expanded participation in, common carrier services request preemption of burdensome municipal requirements. The Commission stands ready to enforce the general prohibition set forth in section 253 of the Communications Act, as amended, which prohibits any state or local requirement that prohibits or has the effect of prohibiting any entity from providing any interstate or intrastate telecommunications service. As required by statute, however, the Commission will consider any preemption request pursuant to section 253 on a case-by-case basis, after notice and opportunity for comment, depending on the facts presented.

B. Wireless Services

75. Some commenters argue that many market entry barriers in the wireless telecommunications services relate to Commission rules, policies and practices that create disincentives for small businesses to participate in the wireless telecommunications services. These include: the Commission's spectrum assignment decisions and its construction requirements, application processing, and enforcement practices. Other obstacles identified by commenters relate to the control of vital inputs by incumbent facilities-based carriers, including the reluctance of facilities-based carriers to negotiate resale agreements. Many commenters also express views concerning our competitive bidding incentives for small businesses in spectrum-based wireless services. We address all of these issues in this Report.

1. Spectrum Assignment Policies

76. Commenters indicate that our spectrum assignment decisions, and specifically the assignment of spectrum for large geographic service areas and in large spectrum blocks, create a barrier to entry for small businesses. Small Business in Telecommunications explains that wide-area geographic systems are more capital intensive to construct and operate than other types of systems. American Mobile Telecommunications Association argues that entry barriers for small businesses are even higher in circumstances in which the Commission has decided to convert from site-specific to geographic area licensing for services in which a substantial number of small, incumbent licensees are already operating. The commenters argue that small business incumbents are often left with limited expansion opportunities because they lack the resources to bid on more frequencies or territory.

77. As we have discussed in the service-specific rulemakings for those services where we have decided to or proposed to adopt geographic area licensing, we believe that using predefined geographic areas better serves the public interest than other types of licensing schemes, such as site-specific licensing. Under a geographic licensing approach, licensees can build and modify their systems in response to market demands without having to come to the Commission for additional authorizations. In addition, geographic licensing is administratively more efficient and less burdensome because licensees are required to file fewer license applications and, thus, the Commission has fewer applications to process.

78. With respect to the impact on incumbent licensees of geographic area licensing, we note that in the context of the service-specific rulemakings, the Commission has either proposed or adopted provisions designed to protect incumbent operations from harmful interference as a result of future operations under the new licensing approach. We believe that this approach represents a balancing of competing interests, including those of incumbents, new entrants, small businesses, and large businesses.

79. While we are mindful of the challenges that small businesses may face in their efforts to acquire geographic area licenses, we have taken steps to alleviate the perceived difficulties. For example, in some services, we have adopted band plans that included licenses for small geographic areas and spectrum blocks; thus, promoting economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by minorities or women. Moreover, in many of our auctionable services, we have adopted special provisions, such as bidding credits and installment payment plans, to assist small businesses, minority and women-owned businesses and rural telephone companies in acquiring spectrum assigned in geographic service areas and spectrum blocks.

80. Finally, we believe, and many commenters in this proceeding agree, that rules and policies that permit geographic partitioning and spectrum disaggregation may also address the concerns raised regarding geographic area licensing. We recently adopted rules permitting all licensees in the broadband PCS service to partition their license areas or disaggregate their spectrum blocks to entities that meet

³⁰ See Second Local Competition Order, 11 FCC Rcd at 19392.

³¹ The URL address for the NANC home page is http://www.fcc.gov/bureaus/common_carrier/www/NANC.

certain minimum eligibility requirements.³²

81. In addition, we currently permit or are considering similar partitioning and disaggregation rules in services other than broadband PCS, including the Multipoint Distribution Service (MDS), 800 MHz SMR, paging, 220 MHz, 38 GHz fixed point-to-point microwave, Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), cellular, and General Wireless Communications Services (GWCS). We also are exploring whether to allow partitioning and disaggregation for other Commercial Mobile Radio Services. We believe these efforts may enhance the ability of small businesses to compete in the wireless telecommunications industry.

2. Spectrum Warehousing and Construction Requirements

82. Small Business in Telecommunications argues that our policies relating to construction requirements encourage spectrum warehousing and thus, create a barrier to market entry for small businesses due to the unavailability of sufficient amounts of spectrum for their use. In particular, Small Business in Telecommunications points to our policy of granting extended implementation authority in the Specialized Mobile Radio (SMR) service to large companies which, it believes, encourages spectrum warehousing. It also suggests that the Commission's enforcement of its construction requirements has resulted in disparate treatment between large and small companies.

83. Extended implementation authority for SMRs was initially established to facilitate construction of wide-area systems by all licensees, both large and small.³³ In eliminating extended implementation authority in the 800 MHz SMR service, we noted that the geographic area licensing plan we adopted for the majority of the spectrum allocated to the service rendered extended implementation authority no longer necessary. We intend to initiate a proceeding that will examine the relationship between longer and more flexible construction requirements and spectrum warehousing. We also note that in

recent years, we have adopted longer construction periods which benefit all licensees, both large and small, and have adopted proposals to adopt flexible construction requirements in other wireless services. In a separate proceeding, we have sought comment on whether our finder's preference program should be eliminated.

3. Application Processing and Filing

One party argues that some methods used by the Commission to process applications result in entry barriers for small businesses. We believe our recent Refarming decision³⁴ addresses some of the concerns raised. Specifically, we recently adopted rules that will inject competition in the frequency coordination process. We expect that such competition will reduce prices, improve coordination services, and provide more flexibility to private land mobile radio licensees.

85. We agree with one commenter that our processes for electronic filing and viewing should be readily accessible by small businesses. We are taking steps to alleviate difficulties experienced by small businesses and others in accessing application and other licensing information on-line.

4. Enforcement Policies

86. Small Business in Telecommunications also argues that the Commission does not allocate sufficient resources to the enforcement of its rules. It claims that complaints filed by its members remain pending for long periods, that alleged violations of construction requirements by large companies go unaddressed and that the Commission staff has, at times, urged settlement of complaints despite apparent rule violations. It argues that all of this, Telecommunications creates regulatory uncertainty which in turn results in unnecessary and unreasonable risk for small business operators.

87. We agree that speedy enforcement of the Communications Act and our rules is imperative if small businesses are to participate effectively in the telecommunications industry and recently issued the Formal Complaint NPRM, 61 FR 67978, December 26, 1996, proposing changes to our formal complaint procedures for common carriers in an effort to improve the speed and effectiveness of our formal complaint process. In addition, the Wireless Telecommunications Bureau's

Enforcement Division has streamlined its informal complaint processes. The streamlined procedures have resulted in faster resolution of written informal complaints.

88. In an effort to reduce the filing of unfounded complaints against carriers, the Enforcement Division has taken steps to assist consumers in dealing with wireless carriers. For example, the Division has published a consumer information bulletin describing how to file a complaint with the FCC, fact sheets about industry practices and applicable FCC rules, and a consumer alert to potential investors, such as small business operators and consumers about how to avoid wireless telecommunications investment scams. Moreover, the Division provides information about consumer complaints to the National Fraud Information Center, provides information on licensing fraud issues to consumer groups, and provides technical support for the Federal Trade Commission and the Securities and Exchange Commission regarding wireless investment scams.

5. Outreach Efforts

89. Some commenters raise the issue of outreach efforts to small businesses. As discussed above, the Office of Communications Business Opportunities was established to address issues relating to small communications businesses. The Wireless Telecommunications Bureau has designated a small business contact person to coordinate issues of particular concern to small businesses in the wireless telecommunications industry, and has sponsored a number of seminars regarding auctions and wireless telecommunications services. In addition, members of the Commission and its staff have spoken at numerous industry, trade association, and public interest organization conferences on opportunities in wireless services licensed by the Commission, and will continue to do so.

6. Interconnection and Resale

90. National Wireless Resellers Association argues that the Commission's decision to sunset its longstanding rule prohibiting carriers from restricting resale of their services erects a market entry barrier because as facilities-based carriers will use the Commission's sunset provision as a basis for refusing to negotiate resale agreements, while financial institutions, sensing the carriers' reluctance to negotiate, will refuse to provide capital to resellers. It further argues that the Commission's inaction in resolving

³² Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-148 and GN Docket No. 93-113, FCC 96-474 (released Dec. 20, 1996) (CMRS Partitioning and Disaggregation Order and FNPRM).

³³ See 800 MHz SMR Order and NPRM, 11 FCC Rcd at 1524.

³⁴ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Second Report and Order, PR Docket No. 92-235, FCC 97-61 (released Mar. 12, 1997) (Refarming Second Report and Order).

disputes about Commercial Mobile Radio Service (CMRS) interconnection issues and the pending reseller complaints on the same subject have created a regulatory environment in which carriers, despite the requirements of Sections 201 and 202 of the Communications Act, feel no pressing obligation to negotiate in good faith with resellers regarding either resale or switch-based resale agreements, resulting in significant barriers to entry and expansion by delaying additional competition and the deployment of innovative services and by creating uncertainty in the industry impacting resellers' access to capital. In addition, National Wireless Resellers Association argues that the Commission must endeavor to balance the unequal bargaining positions between facilities-based carriers and resellers.

91. In our CMRS Resale decision, we extended the resale rule applying to cellular carriers to broadband PCS and covered SMR providers and provided that this rule will sunset five years after we award the last group of initial licenses for currently allocated broadband PCS spectrum. A petition for reconsideration is now pending regarding this issue and, therefore, we will address concerns about the resale sunset in the context of that proceeding. We note that we intend to actively enforce the requirements of Sections 201 and 202, as well as other provisions of the Act and our rules. To date, the Wireless Telecommunications Bureau has received ten formal complaints regarding resale obligations. Of these ten complaints, six have been resolved and four are pending. The Wireless Telecommunications Bureau also has received four complaints regarding interconnection obligations (including reseller/switch interconnection issues), which are pending. Finally, we note that in the First Local Competition Order,³⁵ we concluded that CMRS providers are not *de facto* LECs simply because they provide telephone exchange and exchange access services. In addition, we noted that Congress also concluded that CMRS providers' offering of such services, by itself, did not require them to be classified as LECs.

7. Definition of "Covered SMR"

92. In the CMRS proceeding, the Commission determined that an SMR licensee offering interconnected service

falls within the statutory definition of an CMRS provider. American Mobile Telecommunications Association argues that this definition will include many licensees offering primarily local, dispatch service to specialized customers. It contends that these entities cannot compete against other CMRS providers and will be subject to a panoply of CMRS related regulations that will result in increased costs. We note that the "covered SMR" definition issue is currently pending before the Commission in a number of proceedings.³⁶

8. Competitive Bidding Incentives

93. As we stated in the Market Entry Barriers Notice of Inquiry, Section 309(j) of the Act, like Section 257, embodies Congress' intent to facilitate opportunities for small businesses in telecommunications. Section 309(j) requires the Commission to establish competitive bidding rules and other provisions to ensure that small businesses, businesses owned by minorities and women, and rural telephone companies (collectively referred to as "designated entities") have an opportunity to participate in the wireless telecommunications industry.

94. Many commenters stated that despite our incentives, the use of competitive bidding itself has become a barrier as it has resulted in higher costs for entry into wireless spectrum-based services. We have recognized previously that competitive bidding, despite the public interest benefits associated with its use, has the potential to erect another barrier for small businesses and other designated entities by raising the costs of entry into spectrum-based services.³⁷ However, we note that Section 309(j) provides mechanisms to address this

potential problem, and the Commission has adopted special incentives for designated entities in various services. In addition, our policies regarding geographic partitioning and spectrum disaggregation should aid small businesses and other entrepreneurs through the creation of smaller, less capital intensive licenses that are more easily within the reach of smaller entities. Moreover, such policies may increase access to capital that can be used to construct and maintain wireless systems.³⁸ We further note that small businesses have both participated in and been successful bidders in the majority of spectrum auctions we have conducted to date. Specifically, in our simultaneous multiple-round spectrum auctions, 79% of the auction bidders were small businesses (as defined for each respective service) and small businesses acquired 54% of the total licenses offered in these auctions.³⁹

94. Finally, with respect to Small Business in Telecommunications' suggestion that the Commission examine alternatives to competitive bidding, we note that in granting the Commission authority to assign licenses through competitive bidding, Congress recognized the benefits of this assignment method in ensuring the efficient use of spectrum and faster deployment of new services and technologies to the public as opposed to other methods of licensing. Specifically, Congress found that other licensing methods such as lotteries and comparative hearings "in many respects * * * have not served the public interest." Indeed, in authorizing the Commission's use of competitive bidding, Congress limited the Commission's authority to license spectrum using lotteries. Consequently, we will continue to seek comment, where appropriate, on the use of competitive bidding to assign licenses for individual services in specific rulemaking proceedings, and we will continue to assign licenses for spectrum-based services through competitive bidding where permitted by the Communications Act and where we find that the public interest would be served. In addition, we note that Section 309(j)(12) requires the Commission, no later than September 30, 1997, to

³⁶ See, e.g., CMRS Resale Order, 11 FCC Rcd 18455; Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996); First Memorandum Opinion and Order on Reconsideration, FCC 97-74 (released Mar. 11, 1997); American Mobile Telecommunications Association Petition for Declaratory Ruling (filed Dec. 16, 1996).

³⁷ See, e.g., Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5599-5600 (25% reduction for all broadband PCS C block small business applicants). See, e.g., D, E & F Block Competitive Bidding Report and Order, 11 FCC Rcd at 7875-7876 (25% bidding credit for small businesses and 15% bidding credit for very small businesses); Competitive Bidding Sixth Report and Order, 11 FCC Rcd at 161 (25% bidding credit for small businesses in broadband PCS C block auctions); 900 MHz SMR, 11 FCC Rcd at 1705-06 (15% bidding credit for very small businesses and 10% bidding credit for small businesses). See also 800 MHz SMR Order and NPRM, 11 FCC Rcd at 1574; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order, 11 FCC Rcd 624, 662-663 (1996) (GWCS Second Report and Order).

³⁸ See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Notice of Proposed Rulemaking, 11 FCC Rcd at 10195-10196 (1996).

³⁹ These results include auctions for the narrowband PCS, broadband PCS, direct broadcast satellite, multipoint and/or multichannel distribution, 900 MHz SMR, and digital audio radio services. The Interactive Video and Data Service (IVDS) service auction was an oral outcry auction; thus, those results are excluded.

³⁵ See First Local Competition Order, 11 FCC Rcd at 15995-15996 (the Commission declined to treat CMRS providers as local exchange carriers for purposes of Section 251(c) of the Communications Act). The National Wireless Resellers Association states that it disagrees with the Commission's conclusion in that proceeding.

conduct a public inquiry and submit a report to Congress evaluating the use of competitive bidding, including the extent to which competitive bidding has improved the efficiency and effectiveness of the process for granting licenses and has facilitated the introduction of new spectrum-based technologies and the entry of new companies in the telecommunications market.

96. In the Market Entry Barriers Notice of Inquiry, we asked, we sought preliminary views on how Section 309(j) incentives have operated in the completed auctions employing small business incentives. While one party had a positive view of the competitive bidding incentives used thus far, other commenters, however, did not. Other commenters allege that the Commission has a practice of changing rules in mid-stream. Minority and women entrepreneurs, complain that they lost financing once the Commission eliminated its race and gender-specific competitive bidding provisions in light of *Adarand v. Peña*.⁴⁰

97. We agree that we must continue to take steps to eliminate entry barriers and other burdens that discourage small businesses from participation in auctions for spectrum-based services. Some of the suggestions made by commenters already have been implemented. For example, the Commission continues to adopt special incentives to encourage the participation of small businesses in auctions. Indeed, the Commission has adopted or proposed tiered bidding credits and, in some cases, tiered installment payment plans as suggested in Williams' testimony in a number of services, such as: broadband PCS D, E & F block, WCS, 900 MHz SMR, 800 MHz SMR, Interactive Video and Data Service (IVDS), and paging. The Commission also has eliminated the PCS cross-ownership rule and is considering procedural changes to increase the pace of auctions, and thereby, shorten the duration of each auction.

98. Finally, one party argues that the Commission should consider policies that support entrepreneurs in their efforts to build their systems, recognizing that these small businesses will need to build out quickly not only to comply with FCC rules, but also to reduce the lead time of licensees in the Broadband PCS "A" and "B" block.

99. We are considering some steps to facilitate faster build-out of PCS systems by entrepreneurs. For example, we recently adopted rules, 62 FR 12752,

March 18, 1997, that shorten the voluntary negotiation period for relocation of microwave incumbents by PCS licensees in the "C," "D," "E," and "F" blocks from two years to one year.⁴¹ We believe this rule change will help to eliminate an obstacle to entry for "C" and "F" block licensees by encouraging faster relocation of microwave incumbents and, therefore, enabling these licensees to more quickly build-out their PCS systems and commence operation. In addition, the Wireless Telecommunications Bureau is exploring using its current licensing databases to fashion specialized licensing databases which we anticipate will be of particular interest to small businesses. The Bureau is exploring ways to provide interested parties with information concerning spectrum availability and types of services being provided by existing licensees. We believe that the availability of such databases will facilitate small businesses' efforts to discover and realize partitioning and disaggregation opportunities.

C. Cable Services

100. Before addressing the specific cable-related market entry concerns raised by commenters, we note that even prior to the enactment of Section 257, the Commission already had taken significant steps to minimize the impact of our regulations on small cable businesses. In 1995, we established a new form of cable rate regulation designed to take into account the unique circumstances of small cable systems and companies.⁴² By tailoring rules specifically for small cable systems, the Small System Order has had a significant impact in easing the burdens of regulation for smaller cable companies. The commenters in this proceeding have brought to our attention certain areas in which they believe market entry barriers exist for small cable operators and other small video programming providers.

1. Access to Programming and Related Obstacles

101. Several commenters assert that, due to their size, small cable operators have difficulty in obtaining programming on terms and conditions comparable to their larger competitors.

⁴¹ Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Second Report and Order, WT Docket No. 95-157, FCC 97-48 (released Feb. 27, 1997).

⁴² Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) (Small System Order).

These concerns implicate the program access rules we adopted pursuant to Section 628 of the Communications Act.⁴³ One of the purposes of Section 628 is to increase "competition and diversity in the multichannel video programming market * * *." In adopting program access rules, the Commission sought to carry out Congress' preference that program access disputes be resolved in the marketplace⁴⁴ specifically rejecting a generally applicable approach to program access issues, such as requiring program vendors to offer their programming to all MVPDs [multichannel video programming distributors] at the same rate on the same terms narrowly tailoring our rules to address conduct by vertically integrated programmers, i.e., programmers affiliated with cable operators. Absent regulation, such programmers have the incentive and ability to favor their affiliated cable operators over competing MVPDs. Our rules thus focus on discrimination between MVPDs that are in competition with each other. Commenters in the instant proceeding urge us to expand the focus of the program access rules by more broadly regulating the disparity between programming rates paid by small cable operators and rates paid by larger MVPDs, even where that disparity does not involve competing MVPDs.

102. We do not deem it appropriate to seek to impose new regulations governing the relationship between programmers and distributors at the wholesale level. While higher programming rates obviously are not in the financial interest of smaller operators, this alone does not allow the Commission to step in with a new scheme of regulation. As discussed elsewhere in this item, our efforts to take account of the hardships faced by small cable systems have been aimed more at eliminating potentially burdensome regulatory requirements, rather than marketplace activity that does not appear to be intended to deter competition. The complaints articulated by commenters are consistent with the common practice of vendors offering discounts for bulk purchasers. Even our rules regulating vertically integrated programming vendors allow variations in rates, terms, and conditions when selling to a particular programming distributor based on "economies of scale, cost savings, or other direct and legitimate economic benefits reasonably

⁴³ 47 U.S.C. § 548. See 47 CFR § 76.1000-76.1003.

⁴⁴ Applications of Turner Broadcasting System, Inc., Memorandum Opinion and Order, 11 FCC Rcd 19595 (1996) (Turner).

⁴⁰ 115 S.Ct. 2097 (1995) (Adarand).

attributable to the number of subscribers served by the distributor. * * *

Likewise, Congress recently re-affirmed the right of a cable operator to engage in discriminatory pricing at the retail level by offering bulk discounts to multiple dwelling units. Although we found in 1992 that Congress sought to rely on the marketplace to the extent possible, the Telecommunications Act of 1996 reflects an even more deregulatory intent on the part of Congress. In this environment, we therefore do not believe it appropriate to seek to expand the scope of our program access rules to address the disparity in programming rates where competing MVPDs are not involved.

103. With respect to disparate pricing for programming acquired through broadcaster retransmission consent, Section 325 of the Communications Act⁴⁵ imposed upon the Commission the duty to ensure that its regulation of broadcaster retransmission consent did not conflict with its obligation under Section 623⁴⁶ to ensure that basic service rates are reasonable. Subject to this proviso, Congress expressly gave broadcasters flexibility to negotiate the terms of carriage and did not appear to exclude from the negotiating table such factors as the individual characteristics of the cable system requesting carriage. As the Senate Committee Report explaining Section 325 states, it "is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in the bill to dictate the outcome of the ensuing marketplace negotiations."⁴⁷ We thus are reluctant to limit the scope of negotiations under the retransmission provisions of Section 325 absent clear and persuasive evidence that the present system is not meeting the objectives Congress had in mind.

2. Cable Technical Standards

104. Southwest Missouri Cable asserts that the Commission's stringent proof of performance technical standards require considerable expense and expertise that many small cable operators cannot afford. Our cable technical standards serve a number of important objectives, including ensuring broadcast signals retransmitted by cable systems are not subject to material degradation, promoting uniform and nationwide standards generally, and ensuring cable systems do not exceed our cable signal leakage standards by causing excessive

radiation that might interfere with use of aeronautical radio services and thereby endanger life or property. In Cable Television Technical Standards,⁴⁸ we revised our cable technical rules and required proof of performance testing to ensure compliance. In addition, we stated that we would allow local franchising authorities of small cable systems to adopt less stringent standards because they are in the best position to evaluate the costs of compliance with technical standards and the impact that such costs will have on the provision of cable service. We continue to believe that this is a reasonable approach with respect to ensuring adequate signal quality and, absent a fuller reexamination, represents an appropriate balancing of the need for adequate technical standards and the interests of small cable businesses.

105. Additional testing and reporting requirements apply when a cable operator transmits signals over aeronautical frequencies. Although these rules further important safety considerations, it may be possible to eliminate certain reporting requirements to ease regulatory burdens on smaller entities, without jeopardizing public safety. After further examination, we will decide whether to propose relaxed reporting requirements in this context.

3. Access to Capital and the Definition of "Affiliate"

106. Commenters suggest the Commission could ease the difficulty small cable operators face in obtaining access to capital by narrowly defining the term "affiliate" as that term is used in the small cable operator provisions of the Telecommunications Act.⁴⁹ As enacted by the 1996 Act, Section 623(m) of the Communications Act,⁵⁰ grants partial and, in some cases, total rate deregulation to small cable operators in franchise areas where they serve 50,000 or fewer subscribers. The Commission has requested comment on the manner in which the term "affiliate" should be defined for purposes of determining whether a particular cable operator qualifies as a "small cable operator" entitled to rate deregulation.

107. The Commission intends to give full and careful consideration to the concerns raised by small cable companies in the Cable Act Reform proceeding (Docket 96-85), 61 FR

19013, April 30, 1996, including the extent to which it would be appropriate to define the term "affiliate" to exclude passive investments in small cable companies. The commenters have raised important issues concerning the benefits of permitting such passive investments, but we note that substantial countervailing arguments also have been made that merit our consideration. We expect to address and resolve these issues in the near future.

4. Franchise Renewal Process

108. The Small Cable Business Association maintains that many cable operators face significant abuse in the franchise renewal process because municipalities fail to follow the procedural protections of 47 U.S.C. § 546, and, in other instances, demand system upgrades wholly unrelated to community needs and costs or seek compensation in excess of the five percent franchise fee cap. The Small Cable Business Association recommends that the Commission initiate an inquiry into the franchise renewal processes that exist at the municipal level and, from this investigation, recommend to Congress changes in federal law that will more affirmatively preempt overreaching by local franchise authorities.

109. As the commenters recognize, Section 626(e)(1) expressly provides for a right of judicial appeal for cable operators who have been denied renewal or have been "adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements" of Section 626. In view of Congress' enactment of a specific judicial remedy, and in the absence of specific information that abuses have occurred, we believe it would be premature at this juncture to move forward on the Small Cable Business Association's proposal. Nevertheless, commenters are free to bring to the Commission's attention documented instances of abuse and, if appropriate, we shall recommend legislative initiatives to address any such issues.

5. Leased Access Requirements

110. Southwest Missouri Cable argues that imposing leased access requirements is not practicable, is a severe economic burden imposed on small business, and is totally unnecessary. The Small Cable Business Association states the Commission should adopt leased access rules that adequately compensate small cable companies for their true costs in meeting leased access requests so that such requirements do not cripple small

⁴⁵ 47 U.S.C. § 325.

⁴⁶ 47 U.S.C. § 543.

⁴⁷ Senate Committee on Energy and Commerce, S. Rep. No. 92, 102d Cong., 2nd Sess. at 36 (1991).

⁴⁸ Cable Television Technical and Operational Requirements, Review of the Technical and Operational Requirements of Part 76 Cable Television, Report and Order, 7 FCC Rcd 2021 (1992) (Cable Television Technical Standards).

⁴⁹ 1996 Act, § 302(c). See Cable Act Reform Order, 11 FCC Rcd at 5947-48.

⁵⁰ 47 U.S.C. § 543(m).

cable financially or competitively. Blab Television, on the other hand, asserts that the complexity of Commission rules and the inaccessibility of underlying information from cable operators make it extremely difficult to determine if a given rate is "reasonable" under the statute and that, consequently, leased access programmers face artificially high carriage rates. It states that a low, across-the-board, fixed rate would eliminate market entry barriers and protect both programmers and cable operators.

111. Section 612(b)(1)(D) exempts many smaller cable operators from leased access requirements altogether. In addition, we recently modified our leased access rules, excusing operators of eligible small systems from having to respond to requests for leased access unless the leased access programmer provides specified information designed to show that its request is bona fide and providing qualifying small system operators twice as much time as other cable operators to comply with certain procedural deadlines. The revised rules should benefit small leased access programmers such as Blab Television because they should result in lower maximum rates for tiered services, permit resale, grant access to highly penetrated tiers, and require part-time rates to be prorated without a surcharge. We believe the modified leased access rules strike the proper balance required to ensure that the congressional objectives underlying Section 612 are fully realized without imposing onerous burdens on small cable systems.

6. Access Contracts to Multiple Dwelling Units

112. OpTel maintains that cable operators often enter into service contracts with owners of multiple dwelling units (MDUs) that end up being "perpetual" and thus allow franchised cable operators to lock-up whole blocks of subscribers. It maintains that the Commission should apply a "fresh look" policy to perpetual or other long-term contracts and provide an opportunity for MDU owners or managers to escape such contracts. In a similar vein, Watson Cable states that exclusive agreements of larger cable companies with apartment complexes deny access to smaller cable companies that serve the same area. Both the National Cable Television Association and Tele-Communications, Inc. state that the contracts about which OpTel is concerned are not the type of market entry barrier contemplated by Section 257 because they do not reflect legal or regulatory barriers nor result from disparities in the ability to raise capital.

Instead, such contracts are the result of arms-length, privately-negotiated agreements which are equally available to franchised cable operators and other MVPDs.

113. These issues are related to matters that are the subject of a pending proceeding known as the "Inside Wiring" rulemaking,⁵¹ where the Commission is addressing, among other things, the ability of a cable operator or other MVPDs to claim ownership or control over wiring installed within MDUs. The Commission is considering whether MDU owners and residents have sufficient flexibility to choose between competing MVPDs, or whether Commission action would be appropriate. We believe the Inside Wiring rulemaking is the better forum to address the MDU issues raised by commenters in the instant proceeding. The Commission intends to act in the Inside Wiring proceeding shortly, and will address issues related to MDUs in an appropriate manner.

7. Pole Attachment-Related Impediments

114. Both the Small Cable Business Association and the National Cable Television Association maintain that cable systems that operate in rural areas face entry barriers and competitive barriers from electrical and telephone cooperatives because the rates and conditions which these entities charge for pole attachment usage are not subject to pole attachment regulation. They ask that we propose to Congress a statutory amendment to Section 224 of the Communications Act,⁵² that would apply the pole attachment/access to right-of-way rules to telephone cooperatives and electric cooperatives.

115. When it created this exemption almost twenty years ago, Congress found that cooperative utilities charge the lowest pole rates to pole users. Further, in the rural areas generally served by cooperatives, the technical quality of over-the-air television was often poor, giving the customer-owners of these utilities an added incentive to foster the growth of cable television in their areas. While the comments suggest that some of the circumstances that gave rise to the exemption no longer exist, the record in this proceeding provides an inadequate basis to make a firm recommendation whether to retain or eliminate the exemption. We will continue to consider the matter.

⁵¹ Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring, Final Order on Reconsideration and Further Notice of Proposed Rulemaking, 11 FCC Rcd 4561 (1996).

⁵² 47 U.S.C. § 224.

8. Other Matters

116. The Commission is examining other areas not specifically raised in the Section 257 proceeding that have the potential for imposing barriers on small cable businesses. For example, the Commission is revisiting its current regulation that requires cable operators to be able to override normal programming to give viewers notice of a national emergency. The Commission also is giving careful consideration to whether an extended implementation schedule for smaller cable systems can be developed that would satisfy Section 624, without undermining the congressional intent underlying that section.

117. In Closed Captioning Notice⁵³ we have sought comment on the implementation of Section 713 which requires the Commission to prescribe rules mandating that video programming be closed captioned for the benefit of persons with hearing disabilities. Specifically, we recognized the market entry objectives of Section 257 and seeks comment on whether we should define economic burdens based on the size of the programmer or provider.

D. Mass Media Services

118. In the mass media area, the Commission already has made considerable progress in reducing regulatory hurdles that may impact small businesses and impede entry. We have streamlined and improved our processes so that the average time for processing routine television station sales has been reduced from three months to two months and the average time for processing non-routine radio station sales from twelve months to five months. The Mass Media Bureau also has begun publishing radio application status and station technical information on the Internet so that it is readily available to the public. It has commenced work on a project to provide for electronic filing of broadcast applications, which will scan for incomplete or inaccurate applications and provide for automatic computer analysis of interference issues. The Commission also plans to resolve the proceeding instituted to reform the comparative hearing process for the award of new broadcast licenses. All of these efforts should significantly assist small businesses by generally easing the burdens and delays associated with the regulatory process. The commenters

⁵³ 47 U.S.C. § 613. See In the Matter of Closed Captioning and Video Description of Video Programming, Notice of Proposed Rulemaking, 12 FCC Rcd 1044 (1997) (Closed Captioning Notice).

have raised additional entry barrier issues and these are addressed below.

1. Low Power Television

119. Community Broadcasters Association argues that small businesses, particularly, low power television (LPTV), have not been given the amount of regulatory attention they deserve and that Section 257 requires. More specifically, some commenters state that Section 257's goal of diversity will be rendered virtually meaningless under the Commission's proposed digital television (DTV) conversion proposal because low power television stands to lose approximately forty-five percent of its stations, thereby decreasing diversified ownership which will result in significantly less diversified programming. According to these interests, the Commission should change its "small business" focus from trying to facilitate multi-billion dollar bidding in spectrum auctions to assisting currently-existing businesses that are truly small so that these business are not eradicated. In particular, these commenters believe the Commission should propose multiple classes of DTV—full power and small stations—and open a second window for these smaller DTV allotments and designate only low power television station licensees as eligible. They urge the Commission to use a wide range of solutions proposed by the low power television industry to protect as many existing low power television authorizations as possible and to accommodate as many of these businesses with DTV conversion channels as feasible.

120. With respect to concerns expressed by some commenters about the impact of the conversion of DTV on LPTV stations, on April 21, 1997, the Commission released the DTV Fifth Report and Order in MM Docket No. 87-268,⁵⁴ 62 FR 26684, May 14, 1997, which issued initial licenses and established the service rules for DTV.⁵⁵ In the DTV Fifth Report and Order, following Congress' direction in Section

336(a)(1) of the 1996 Act, we determined that initial eligibility for DTV licenses should be limited to those full-power broadcasters who, as of the date of issuance of the initial digital licenses, hold a license to operate a television broadcast station or a permit to construct such a station, or both. We reiterated our previous determination that there is insufficient spectrum to include LPTV stations and translators, which are secondary under our rules and policies, to be initially eligible for a DTV channel and that we had not been able to find a means of resolving this problem. However, we also pointed out that limiting initial eligibility to full-power broadcasters does not necessarily exclude LPTV stations from the conversion to DTV.

121. On the same day, in the DTV Sixth Report and Order in MM Docket No. 87-268,⁵⁶ 62 FR 26996, May 16, 1997 we adopted a number of measures intended to minimize the impact of DTV implementation on existing LPTV service. These measures include many of the changes to the technical rules requested by the LPTV and TV translator industries. The new rules provide additional flexibility to accommodate low power operations during and after the transition to DTV and thus mitigate the impact of DTV implementation on LPTV. For example, low power stations that are displaced by new DTV stations may apply for a suitable replacement channel in the same area, on a first-come, first-served basis, without being subject to competing applications. We also deleted the restrictions on use of a channel either seven channels below or fourteen channels above the channel of another station in the low power TV service, allowed LPTV and TV translator stations to make use of appropriate interference abatement techniques to show that the station will not cause interference to other full or low power stations, and allow LPTV and TV translator station operators and applicants to agree to accept interference from other LPTV and TV translator stations.

122. In the DTV Sixth Report and Order, we also noted that, as secondary operations, LPTV and TV translator stations would be able to continue to

operate until a displacing DTV station or a new primary service provider is operational. We concluded that these various rule changes would preserve many existing low power operations, open many new channels for those low power operations subject to possible displacement by DTV, and allow hundreds of LPTV and TV translators to continue service to their viewers. We further recognized that most low power stations would be able to continue to operate throughout the DTV transition.

123. We note that DTV may offer new opportunities for small businesses. For example, small businesses may have opportunities to apply for licenses to use much of the recovered spectrum. Also, new opportunities might arise for small businesses to participate in the manufacturing or sale of equipment for DTV, LPTV, and related services, or for wireless services that might possibly be provided over recovered spectrum from the transition by broadcasters to DTV.

2. Wireless Cable

124. Integration Communications International et al. maintain that the biggest barrier to wireless cable's competition with wireline cable and DBS services and to the goal of a level playing field is insufficient channel capacity. They state that wireless cable operators must digitize and compress the signal to increase capacity but the high costs of hardware to digitize and compress is prohibitive for small businesses. Wireless cable interests also contend that the Commission should allow wireless cable operators to receive digitalized, compressed signals from one source such as DBS service, in order to avoid the enormous capital investment that otherwise would be necessary for digital compression equipment at each system headend.

125. The Commission is sensitive to the commenters' complaint that existing technology for digital modulation in Multipoint Distribution Service station operation is too expensive for small businesses, and that the Commission should approve more cost effective methods of digitized signal reception by wireless cable operators. We already have taken some steps to address this issue. Specifically, we authorized the use of digital modulation techniques in MDS and ITFS on an interim basis until final rules could be promulgated.⁵⁷ In addition, on March 14, 1997, a group of entities in the wireless cable industry filed a petition for rulemaking

⁵⁴ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Fifth Report and Order, MM Docket No. 87-268, FCC 97-116 (released Apr. 21, 1997) (DTV Fifth Report and Order).

⁵⁵ See DTV Sixth Further Notice, 11 FCC Rcd 10968. While this proceeding progressed further, all-digital advanced television systems were developed. Thereafter, the Commission began to refer to "advanced television" as "digital television" or "DTV" in recognition that, with the development of the technology, any advanced television system was certain to be digital. See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fourth Report and Order, 11 FCC Rcd 17771, 17773 (1996).

⁵⁶ See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, MM Docket No. 87-268, FCC 97-115, ¶¶ 6, 114-147 (released Apr. 21, 1997) (DTV Sixth Report and Order) (adopting a Table of Allotments for DTV, rules for initial DTV allotments, procedures for assigning DTV frequencies, and plans for spectrum recovery). Thus, LPTV stations will continue to have secondary status to full-service television stations. See 47 CFR § 73.702(b).

⁵⁷ Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996).

proposing to engage in fixed two-way digital transmissions, and we issued a public notice seeking comment on the petition.⁵⁸ The Commission will continue to take suitable steps to enhance the wireless cable operators' ability to provide competition in the video marketplace, including, as appropriate, authorization of new technological advancements for use by such operators. Broadcast Data et al. maintain that the Commission should repeal or modify Sections 21.44 and 21.912, which, in their view, unfairly impose a so-called "death penalty" on MDS licensees. They apparently believe that, in order to operate, small MDS businesses must enter into channel leasing agreements whereby larger wireless cable entities provide programming or equipment in exchange for channel capacity as part of a channel aggregation strategy. Thus, the commentators urge that the Commission eliminate the "death penalty" provisions of the rules or guarantee the licensee access to the larger operator's site, equipment, and, if necessary, channel capacity.

126. Because wireless cable's ability to compete effectively with other providers on a more equal footing is tied, with other factors, to MDS operators' ability to attract investment capital, we continue to believe that channel accumulation is an essential element in the accomplishment of that goal.⁵⁹ Section 21.932 of our rules was specifically adopted to enhance the auction winner's opportunity for success. Thus, we held that the "available MDS spectrum within a BTA authorization will increase if the unconstructed facilities or unused channels held by an MDS incumbent with transmitter locations within a particular BTA are forfeited or if previously proposed conditional licenses or modifications are not granted." Moreover, we believe our rules provide sufficient safeguards to protect existing licensees in a manner consistent with the public interest. Where appropriate we will grant reinstatement pursuant to Section

21.44(b) and waivers pursuant to Section 21.303 of our rules. We caution all small business licensees, however, to scrutinize carefully any channel lease agreement before entering into such an arrangement. We believe it is the responsibility of the respective parties to negotiate the terms most suited to their needs.

3. Broadcast Ownership Consolidation

127. Some commenters maintain that ownership consolidation in the broadcast industry under relaxed ownership restrictions constitute market entry barriers. For example, United Church of Christ and Minority Media and Telecommunications Council assert that minority-owned businesses are effectively being squeezed out of local markets by better financed group owners and that the Commission's definition of "local market," in combination with Section 202(b) of the 1996 Act, permits undue concentrations of ownership in local communities. One party contends that FCC policies on consolidations, mergers, and acquisitions constitute market entry barriers for minorities because the resources of small businesses are limited and group owners greatly influence major advertisers and media budgets and buys.

128. Similarly, National Association of Black Owned Broadcasters maintains that the Commission, the courts, and Congress have fostered policies that have resulted in consolidation of ownership in the broadcast industry and a retreat from promotion of minority ownership and that these actions include: (1) Repeal of the "seven station rule"; (2) adoption of rules permitting radio duopolies; (3) Congress' repeal of the tax certificate for sales to minorities and women; (4) the U.S. Supreme Court's *Adarand* decision; and (5) the Telecommunications Act of 1996. It, as well as the United Church of Christ and Minority Media and Telecommunications Council, maintain that the Commission should recommend to Congress reinstatement of the minority tax certificate policy.

129. Commenters are correct in pointing out that there has been greater consolidation of radio ownership since the relaxation of the Commission's broadcast radio ownership rules. This, however, is consistent with congressional policy as reflected in the 1996 Act, which explicitly directed the FCC to eliminate the national radio ownership rule and to replace the local radio ownership rule with specific, significantly relaxed limits on local radio ownership depending on the size of the local market. The Commission

issued an order on March 8, 1996, revising the radio ownership rules accordingly.⁶⁰ In addition, we will consider the issues raised by the commenters regarding our former minority tax certificate program in our subsequent evaluation of unique obstacles for small businesses owned by women and minorities.

130. As to the commenters' proposals to redefine the local television market for purposes of enforcing the television duopoly rule, the Commission has recently released a Second Notice of Proposed Rule Making, 61 FR 66978, December 19, 1996, in its local television ownership proceeding.⁶¹ This proceeding seeks comment on revising the television duopoly rule, including whether to modify the current Grade B signal contour test for measuring the local geographic market, as well as revising the radio-television cross-ownership rule. The Commission expressly sought comment on what aggregate effect these proposed rules may have on small stations, or stations owned by minorities and women. In addition, in a pending rulemaking, the Commission sought comment on the potential impact on our attribution rules resulting from the relaxation of our multiple ownership rules as required by the 1996 Act.⁶²

131. Finally, Section 202(h) of the 1996 Act directs the Commission to conduct a biennial review of all its ownership rules. The first such review will be conducted in 1998. In this review, we expect to examine issues related to the changes and consolidation that have resulted in the market since the passage of the 1996 Act, including the impact on small businesses and small businesses owned by minorities or women, resulting from the industry and regulatory changes during the past several years. In addition, there is a pending proceeding in which the Commission proposed initiatives to increase minority and female ownership of mass media facilities.⁶³

⁶⁰ See Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, Order, 11 FCC Rcd 12368 (1996).

⁶¹ Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making, FCC 96-438 (released Nov. 7, 1996).

⁶² Review of the Commission's Regulations Governing Attribution of Broadcast and Cable /MDS Interests, Review of the Commissions Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy, Further Notice of Proposed Rule Making, MM Docket Nos. 94-150, 92-51 & 87-154, FCC 96-436 (released Nov. 7, 1996).

⁶³ See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice

⁵⁸ FCC Public Notice, Pleading Cycle Established for Comments on Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, DA 97-637 (released Mar. 31, 1997).

⁵⁹ See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Notice of Proposed Rulemaking, 9 FCC Rcd 7666, 7667 (1994).

4. FCC Policing of Abuse and Enforcement of Rules

132. Brown-Blackwell states the Commission should be more active in investigating possible fraud and in monitoring licensees for abuse and enforcing its rules where ownership interests of minorities and women are affected because apathy in such areas can prevent entry into the marketplace. In a similar vein, Romar contends that the Commission should police against abuse of preferences, i.e., where after a construction permit is awarded, the interest of the minority or female is transferred to others.

133. As discussed in Part IV of this Report, the Commission is continuing to explore issues relating to minorities and women in telecommunications services and expects to issue a more comprehensive report on those issues in the future. As part of that effort, we shall fully consider issues relating to the potential abuses described by these commenters and take appropriate action where warranted.

E. Other Services

1. International Bureau

134. With respect to international services, several commenters express concern about Commission actions that they believe may hinder small businesses' ability to enter the telecommunications market, such as the Commission's actions with respect to TelQuest's application to operate a fixed transmit/receive earth station to uplink and receive U.S. and Canadian DBS programming. On July 15, 1996, the International Bureau concluded that, because Canada had not yet authorized the satellites with which TelQuest proposed to communicate, TelQuest's earth station applications should be dismissed, without prejudice, as premature. In taking this action, the International Bureau reiterated that its policy is to dismiss earth station applications where the space station with which the earth station will communicate has not yet been authorized.⁶⁴

of Proposed Rulemaking, 10 FCC Rcd 2788 (1995) (Minority and Female Ownership NPRM).

⁶⁴ See Applications of TelQuest Ventures, L.L.C. and Western Tele-Communications, Inc., 11 FCC Rcd 8151 (1996). The Commission noted that this policy prevents premature consideration of systems that may never operate and deters applicants from filing competing premature applications in the hope of obtaining earth station authorizations for the purpose of influencing space station licensing decisions. *Id.* at 8154. On October 29, 1996, the International Bureau denied TelQuest's petition for reconsideration finding that TelQuest's earth station application was properly dismissed, without prejudice. See Applications of TelQuest Ventures, L.L.C. and Western Tele-Communications, Inc.,

135. The specific matter of TelQuest's application is pending separately in connection with TelQuest's application for review of two International Bureau Orders. We will address that matter in that proceeding. Based on the comments received in this proceeding, we find nothing in the International Bureau policy reflected in that case that imposes burdens uniquely or predominantly on small businesses.⁶⁵

136. Several commenting parties object to the Commission's financial qualifications requirements for satellite applicants, on the ground that the Commission's standards are an entry barrier for small businesses. Mobile Communications Holdings contends that Commission Rule 25.143(b)(3) adversely affects small businesses because it fails to take into account the unique ways that small businesses obtain capital. As a means of addressing these concerns, parties generally recommend that the Commission apply the financial standards more flexibly. However, one party disagrees with this proposal and asserts that a less rigorous standard is not in the public interest.

137. The specific requests for action concerning financial standards as applied to satellite services generally relate to other ongoing proceedings pending before the Commission and the courts, and are more appropriately addressed in connection with those specific proceedings. We also have pending petitions for reconsideration of our decision in the DISCO I Order to adopt a uniform financial standard for domestic and international fixed satellite service satellites. Furthermore, we have raised issues concerning the proper financial standard to be applied in the non-voice non-geostationary mobile satellite service (Little LEOs) in an outstanding Notice of Proposed Rulemaking.⁶⁶ We believe these matters are most appropriately addressed in connection with the records developed in those proceedings.

2. Office of Engineering and Technology

138. In December 1996, the Commission adopted a Notice of

Report and Order, 11 FCC Rcd 13943 (1996), applications for review pending.

⁶⁵ TelQuest has also sought reconsideration of our decision in Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Report and Order, FCC 96-425 (released Dec. 16, 1996), on a number of related grounds. The arguments raised in that proceeding will be addressed in that proceeding.

⁶⁶ See Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, Notice of Proposed Rulemaking, IB Docket No. 96-220, FCC 96-426 (released Oct. 29, 1996).

Proposed Rulemaking, 61 FR 68698, December 30, 1996, to eliminate unnecessary and burdensome Experimental Radio Service (ERS) regulations for ERS applicants and licensees, many of which are small entities.⁶⁷ If adopted, the proposals in the Experimental Radio Notice would provide an increased opportunity for manufacturers, inventors, entrepreneurs, and students to experiment with new radio technologies, equipment designs, characteristics of radio wave propagation, and new service concepts using the radio spectrum. Because the proposals would streamline the ERS regulations and would remove excessive regulatory burdens, they would be beneficial to small businesses.

139. In another recent proceeding, 62 FR 04920, February 3, 1997, the Commission has provided licensees an alternative means of demonstrating compliance with the Commission's antenna performance standards.⁶⁸ This measure removes an obstacle that had previously existed for manufacturers and licensees, a number of which are small businesses. The practical effect of the Flexible Antenna Report and Order is to permit licensees to use technologically innovative directional microwave antennas (such as planar-array antennas), which our rules had unintentionally prohibited.

140. On January 9, 1997, the Commission adopted the U-NII Report and Order, 62 FR 04649, January 31, 1997, making available 300 megahertz of spectrum at 5.15-5.35 GHz and 5.725-5.825 GHz for a new category of Unlicensed National Information Infrastructure (U-NII) devices⁶⁹ that will provide short-range, high speed wireless digital communications on an unlicensed basis.

141. By fostering development of a broad range of new devices and service offerings, the U-NII Report and Order should stimulate economic development and the growth of new industries and, at the same time, further our Section 257 objectives. Specifically, allowing unlicensed devices access to the 5.15-5.35 GHz and 5.725-5.825 GHz

⁶⁷ Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, Notice of Proposed Rulemaking, ET Docket No. 96-256, FCC 96-475 (released Dec. 20, 1996) (Experimental Radio Notice).

⁶⁸ Amendment of Parts 74, 78, and 101 of the Commission's Rules to Adopt More Flexible Standards for Directional Microwave Antennas, Report and Order, 12 FCC Rcd 1016 (1997) (Flexible Antenna Report and Order).

⁶⁹ Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range, Report and Order, 12 FCC Rcd 1576 (1997) (U-NII Report and Order).

bands will enable educational institutions to form inexpensive broadband wireless computer networks between classrooms, thereby providing cost-effective access to an array of multimedia services on the Internet. Use of the new spectrum by unlicensed wireless networks also could help improve the quality and reduce the cost of services provided by small business users (including medical providers) of the networks.

142. On March 13, 1997, the Commission adopted its Simplify and Streamline the Equipment Authorization Process Notice, 62 FR 24383, May 5, 1997.⁷⁰ By this action, the Commission proposes to eliminate two of its five equipment authorization procedures, namely, the type acceptance procedure and the notification procedure. As a result, there will be only one procedure for equipment that must be authorized by the Commission: certification. These proposals would lead to a simpler and far less cumbersome set of equipment authorization requirements, which will promote compliance. In addition, the Commission proposes to relax the equipment authorization requirements for a broad array of equipment, including unintentional radiators, consumer ISM equipment and a variety of radio transmitters. Thus, adoption of these proposals would further advance our Section 257 objectives to enhance market opportunities for small businesses, such as manufacturers who supply parts and services to telecommunications service providers, to speed delivery of their products to the public, and would save manufacturers some \$100 million by reducing the number of applications necessary for equipment authorization.

3. Compliance and Information Bureau

143. The FCC's Compliance and Information Bureau is furthering the Commission's Section 257 mandate through information dissemination initiatives that are particularly valuable to small businesses, which, as discussed above, often lack resources and information. First, as part of its ongoing commitment to make information available to the public expeditiously and inexpensively, in 1996, CIB established a new FCC National Call

Center.⁷¹ The National Call Center provides consumers with free, one-stop shopping for Commission information in English and Spanish in 26 states, (it is being phased-in geographically as budget constraints permit). The Call Center also provides TTY access.⁷²

144. CIB Public Affairs Specialists and Compliance Specialists in field offices throughout the country have provided various small telecommunications businesses, including women and minority businesses, information regarding telecommunication issues. In addition, CIB faxes a "Welcome Letter" to new telecommunications companies listed in local newspaper legal notices, advising that the FCC can assist and answer communications questions. In conjunction with the SBA, participated in the U.S. General Store for Small Businesses in Houston, Texas, which provides at one location all the information necessary to operate a small business.

145. CIB has specifically required state broadcast associations to include non-member licensees, many of which are small businesses, in their Alternative Broadcast Inspection Program (ABIP). On an continuing basis, CIB notifies radio stations about information regarding various communications-related matters, e.g., spectrum auctions, and cable complaint procedures, for inclusion in stations' public service information programs. CIB also made outreach efforts to manufacturers as well as participants to implement the new Emergency Alert System (EAS), and has worked with the cable industry to ensure that emergency messages will reach as many members of the public as possible without adverse financial impact on small cable operators. Further, CIB works closely with local chambers of commerce, which has been particularly effective in reaching small businesses. All of these steps serve to promote opportunities for small businesses by ensuring that, despite limited resources, small business have access to the most current information available about new telecommunication policies and services.

⁷¹ The National Call Center can be accessed by dialing 1-888-CALL FCC (1-888-225-5322). See FCC News Release, FCC's Toll-Free Information Service Expanded (September 30, 1996). The Call Center has received nearly 160,000 calls. Additional information about CIB resources and the National Call Center is available on the World Wide Web (<http://www.fcc.gov/cib>) (CIB homepage) and (<http://www.fcc.gov/cib/ncc>).

⁷² Full Call Center services for the hearing impaired can be accessed through the Telecommunications Device of the Deaf (TTY) by dialing 1-888-TELL-FCC (835-5322).

IV. Unique Obstacles for Small Businesses Owned by Women or Minorities

A. Background

146. In the Market Entry Barriers Notice of Inquiry, we inquired whether small businesses owned by women or minorities encounter unique obstacles in the telecommunications market.⁷³ We asked parties to submit personal accounts of individual experiences, studies, reports, statistical data, or any other information. We recognized that a prospective barrier is discrimination and requested evidence of any past or current discrimination or unfavorable treatment. Because governmental action that takes race or gender into account is subject to heightened judicial scrutiny, we sought comment on whether as a legal matter, the obstacles that women and minorities encounter are significant enough to justify special incentives for those groups.⁷⁴ We specifically asked whether there is sufficient evidence of discrimination in the communications industry against any particular minority group to support race-based incentives under the strict scrutiny standard and whether there is sufficient evidence to warrant incentives for women under either strict scrutiny (in the event that the Supreme Court raised the gender standard to strict scrutiny) or intermediate scrutiny (in the event that the Court maintained the existing intermediate scrutiny standard).

147. In addition, we sought comment on any nonremedial objectives that would justify the use of race and gender-based incentives while furthering the Section 257 mandate. Finally, we asked parties to propose specific licensing incentives to redress any discrimination or to further any nonremedial objectives. We encouraged parties to support their proposals with

⁷³ As explained in the Market Entry Barriers Notice of Inquiry, we explored this area for several reasons: the legislative history of Section 257 suggests Congress was concerned about the under representation of minority and women-owned small businesses in the telecommunications market and sought to increase competition by diversifying ownership, see 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins); Section 309(j) requires the Commission to further opportunities for businesses owned by women and minorities in the provision of spectrum-based services; and FCC licensing and other statistical data show that a portion of small communications businesses are owned by women and minorities and there is evidence that these entities encounter unique market barriers. Market Entry Barriers Notice of Inquiry, 11 FCC Rcd at 6301-6305.

⁷⁴ Market Entry Barriers Notice of Inquiry, 11 FCC Rcd at 6308, 6315-6317. In *Adarand*, the Supreme Court held that government classifications based on race must satisfy strict scrutiny. 115 S.Ct. at 2113. For a full discussion of the constitutional standards, see Market Entry Barriers Notice of Inquiry, 11 FCC Rcd at 6309-6315.

⁷⁰ Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment, Notice of Proposed Rule Making, ET Docket No. 97-84, FCC 97-84 (released Mar. 27, 1997) (Simplify and Streamline the Equipment Authorization Process Notice).

data and to identify specific provisions of the Act that would authorize us to implement any such proposals.

148. At the Market Entry Barriers Forum, which included a panel on "Unique Barriers for Minority or Women-Owned Businesses," several women and minority entrepreneurs described their personal experiences in trying to enter and participate in the telecommunications market, members of the financial industry described lending and advertising practices, and a representative from the Department of Justice addressed the constitutional standards for race and gender programs. Although we will address in more detail the comments regarding women and minorities in our subsequent report, in this Report we provide a summary of the principal barriers and proposals raised in the record to date.

B. Principal Obstacles and Proposals Identified in the Record

149. Parties to the Section 257 proceeding identify several obstacles that women or minority-owned businesses face based on race or gender. The predominant impediment to entry identified is access to and cost of capital. Many parties cite difficulty in obtaining credit and time-delayed payment options, as well as negative attitudes toward women or minority-owned businesses. Ofori, United Church of Christ and Minority Media and Telecommunications Council assert that minority entrepreneurs often must rely on financiers and venture capitalists that impose unfavorable terms, for example, requiring unreasonable performance goals for returns on investment or advertising revenue. Williams states that traditional sources of capital for minority businesses, such as small business investment companies (SBICs), are inadequate to cover entry costs into telecommunications. In addition, some parties contend that historical treatment of minorities and women has contributed to the difficulty those entities experience in financing small telecommunications ventures.

150. Some parties point to other possible barriers. For example, some commenters identify barriers in licensing of specific telecommunications services; numerous parties assert that employment and management experience is valuable for ownership in telecommunications and that lack of employment opportunity or employment discrimination is a barrier; several commenters advocate stronger enforcement of the Commission's EEO rules or preference policies; some parties contend that women and minorities are excluded from

government procurement, which impedes participation in the telecommunications market, and one party cites political changes as barring entry. The Small Business Administration maintains that beyond all the general barriers that small businesses encounter, women and minorities also face an entirely different set of market entry barriers that result in a disproportionately low rate of ownership and participation in virtually every telecommunications field.

151. Numerous parties advocate adoption of licensing incentives for women and minorities. American Women in Radio and Television and Women of Wireless recommend that the Commission adopt gender-based policies for both remedial and nonremedial purposes—to redress prior and ongoing discrimination against women; to foster diversity in media voices under Section 257(b); and to widely disseminate spectrum licenses under Section 309(j). National Black Caucus of State Legislators argues that the Adarand decision, coupled with Congressional repeal of the tax certificate program, and the FCC's response to Adarand demonstrates that the federal government fails to address the "growing erosion of economic opportunity on the part of African-Americans." Some commenters suggest that the Commission encourage industry to establish partnerships with women or minority-owned companies, and to provide training programs, business opportunities, or mentoring programs to assist such groups in developing skills and becoming successful telecommunications entrepreneurs. Some parties recommend specific auction-related provisions. They argue that the FCC should reinstate its pre-Adarand PCS incentive policies for women and minorities, while others raise Section 309(j) issues. Many parties urge the FCC to conduct a study of the participation of women and minorities in the telecommunications industry and market entry barriers.

C. Ongoing Commission Evaluation

152. There is a long history of recognition by this agency, as well as by courts, Congress, and the public, that minorities and women have experienced serious obstacles in attempting to participate in the telecommunications industry and that their greater participation would enhance the public interest. Since the late 1960's, the Commission has addressed women and minority access to employment and ownership opportunities in the telecommunications area. In 1982,

Congress observed that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications" and enacted Section 309(i)(3)(A) of the Communications Act, authorizing the Commission to provide minority preferences in awarding spectrum licenses by lottery. More recently, in 1993, Congress reached beyond broadcast services to wireless spectrum-based services and enacted Section 309(j), which requires the Commission to adopt competitive bidding procedures that promote economic opportunity to a wide variety of applicants, including minorities and women. In implementing Section 309(j), the Commission designed rules to assist small, rural, women, and minority-owned businesses "to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital." Although the specific auction rules we adopted for businesses owned by women and minorities were held in abeyance after Adarand, since then, we have continued to request comment on the effect of Adarand on our policies and to seek evidence of discrimination against women or minorities in telecommunications services. Later, in enacting Section 257 of the 1996 Act, one member of Congress noted that women and minorities are "extremely under represented" in the telecommunications industry.

153. Thus, our Section 257 mandate continues a succession of measures over several decades to enhance opportunities for women and minorities. The goal in this aspect of the Section 257 proceeding is to identify the specific obstacles that women and minorities face and to determine whether they are of the nature that will satisfy heightened judicial scrutiny. As a federal government agency, our ability to adopt race or gender based incentives is limited by constitutional requirements. Under Adarand, any governmental classification based on race must satisfy strict scrutiny: it must be narrowly tailored to further compelling governmental interests. Remedying discrimination against a particular racial group in a specific field has been recognized as a compelling government interest. Thus, for us to adopt race-based incentives, there must be an appropriate record of discrimination against minorities in telecommunications. After we released the Market Entry Barriers Notice of Inquiry, the Supreme Court clarified the

applicable constitutional standard for classifications regarding gender. In *United States v. Commonwealth of Virginia*,⁷⁵ the Court affirmed and applied its pre-existing standard for reviewing gender classifications—intermediate scrutiny—to hold that a state male-only military college violated the Equal Protection Clause.⁷⁶ Under intermediate scrutiny, a government's justification for gender-based classifications must be "exceedingly persuasive" and specifically, the government must show at least that the classification serves important governmental objectives and is substantially related to those objectives.

154. The record in this proceeding, including comments on the Market Entry Barriers Notice of Inquiry and the testimony at the Market Entry Barriers Forum, supplemented by the record in various other proceedings, strongly indicates that minorities and women have experienced tremendous obstacles in participating in the telecommunications industry. To satisfy our statutory obligations under both Section 257 and Section 309(j), we are commencing a comprehensive study to further examine the role of small businesses and businesses owned by minorities or women in the telecommunications industry and the impact of our policies on access to the industry for such businesses. In addition to furthering the requirements of Section 257, the study will assist us in fulfilling our Section 309(j) mandates and in determining whether there are constitutionally-sound bases for adopting licensing incentives for women or minorities.

155. As to Section 257, the study will provide data and information to help us identify and eliminate market entry barriers for small businesses in the telecommunications market as the statute requires. In addition, the study will assist the Commission in reporting to Congress on our implementation of Section 257, as the statute also requires.⁷⁷ As to Section 309(j), the study will be useful in comparing the effectiveness of auction and non-auction methodologies, and in assessing entry of new companies into the market, prompt delivery of service to rural areas, and

the participation and success of small businesses and businesses owned by minorities or women in the competitive bidding process, as well as reporting to Congress on the auction process as required.

156. The study will be conducted by an external contractor. It will focus on two types of communications services, the oldest and the newest—broadcast and wireless.⁷⁸ Specifically, the study will develop a profile of applicants and participants in broadcast licensing and the licensing of certain wireless services, both by auction and other previously used methods. It will analyze participation rates of small businesses, minority-owned businesses, women-owned businesses, and the difference between participants and potential participants. The study will identify and evaluate the effect of any market entry barriers and other impediments on participation and attainment of licenses, the impact of incumbency in the telecommunications industry, the effect of previous FCC licensing proceedings, the effect of the presence, absence and removal of race and gender-based provisions, and the effect of past employment or management experience in the communications industry on auction participation and success.

V. Conclusion

This Report, we believe, demonstrates our implementation of Section 257. As described above, the Commission has taken numerous steps to eliminate regulatory and other impediments to entry for small businesses in the telecommunications market and will continue to do so.

VI. Ordering Clauses

158. The motion of Blab Television to accept late-filed comments in this proceeding is *Granted*.

159. The motion of National Association of Black Owned Broadcasters to accept late-filed comments in this proceeding is *Granted*.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 97-16868 Filed 6-26-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-224A]

RIN 2137-AD02

Hazardous Materials: Shipping Description and Packaging of Oxygen Generators; Delay of Effective Date, Technical Amendments and Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; delay of effective date, technical amendments and corrections.

SUMMARY: On June 5, 1997, RSPA published a final rule which amended the Hazardous Materials Regulations by adding a specific shipping description to the Hazardous Materials Table for chemical oxygen generators. In this revision to the final rule, RSPA is delaying the effective date of the final rule for one month, authorizing permissive compliance immediately, correcting the identification number for chemical oxygen generators and a typographic error in the Hazardous Materials Table entry for them, and revising Special provision 60 for clarity and to provide additional time to conform to additional approval procedures.

DATES: *Effective dates:* The effective date for the final rule published at 62 FR 30767 under Docket HM-224A on June 5, 1997, is delayed from July 7, 1997 to August 7, 1997. The amendments and corrections in this final rule are effective August 7, 1997.

Applicability: The provisions of § 172.101(l)(1)(ii), which otherwise would allow up to one year after a change in the Hazardous Materials Table to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments and corrections.

Permissive compliance date: Compliance with the requirements adopted in this final rule and in the final rule published at 62 FR 30767 is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, 202-366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001.

⁷⁵ 116 S.Ct. 2264 (1996).

⁷⁶ *United States v. Virginia*, 116 S.Ct. 2264, 2274-2276 (citing *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136-137 & n.6 (1994) and *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

⁷⁷ 47 U.S.C. § 257(c). Section 257(c) requires the Commission to report to Congress every three years following completion of the proceeding on regulations that have been issued to eliminate barriers and any statutory barriers that the Commission recommends be eliminated.

⁷⁸ An analysis of broadcast licensing also will assist the Commission's analysis of auction participation. Many auction participants and investors are broadcast licensees. For example, the study will examine the impact of incumbency and the regulatory structure the FCC established for the licensing of broadcast spectrum on auction bidding.